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ABSTRACT

The Child Support Enforcement Amendments of 1984 require that every state not qualifying for a waiver appoint a commission to look at the success of the state's child support enforcement program in securing support and parental involvement for all children needing such services, whether they were eligible for public assistance or not. This document contains state-by-state summaries of these reports, which address the topics of visitation; establishment of objective standards for support; enforcement of interstate obligations; availability, cost, and effectiveness of services; and need for additional state or federal legislation. Common themes of the states' reports are discussed in an executive summary. These themes include: (1) administrative and judicial organization (administration, courts); (2) child support (amount, modification, collection, enforcement, availability of services); (3) child custody; (4) visitation; (5) interstate enforcement; (6) paternity; and (7) public education and awareness. The appendices include lists of governors and commission chairpersons with their addresses. Seven states which volunteered to submit reports despite waivers are listed with names and addresses of contact persons. (ABL)

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# SUMMARIES OF REPORTS BY STATE COMMISSIONS ON CHILD SUPPORT ENFORCEMENT

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF CHILD SUPPORT ENFORCEMENT

Final Edition
May 1986

# FOREWORD

Approximately 800 very special appointments were made by the Nation's Governors in early 1985. These appointees from the Executive, Legislative, and Judicial Branches of Government and the public at large involved themselves in a tremendous and significant effort this past year which will help produce the much needed changes mandated by the Administration and Congress in enforcement of child support.

The Office of Child Support Enforcement very much appreciates the Commissions' enthusiastic work and sharing of the respective findings and recommendations. Our gratitude is also extended to the Governors for their continued commitment to effective child support enforcement.

This effort and implementation of the recommendations will "make a difference" to millions of children due parental support and encouragement.

Wayne A Stanton
Wayne A. Stanton, Director
Office of Child Support Enforcement

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# EXECUTIVE SUMMARY

# Executive Summary

In August 1984, President Ronald Reagan signed into law the Child Support Enforcement Amendments of 1984 (Public Law 98-378). Section 15 of the new law required the Governor of each State to appoint a commission to look at the success of the State's child support enforcement program in securing support and parental involvement for all children needing such services, whether they were eligible for public assistance or not.

The commissions were to include representatives of all aspects of the child support system: custodial and noncustodial parents, the judiciary, legislators, child welfare and social services agencies, the State agency responsible for child support enforcement, and others. The areas the commissions were to study included visitation; establishment of objective standards for support; enforcement of interstate obligations; availability, cost, and effectiveness of services; and need for additional State or Federal legislation.

States that met certain conditions stipulated in the law could obtain, from the Secretary of Health and Human Services, a waiver of the requirement to establish a commission. No commission was necessary if the State had in effect objective guidelines for the determination and enforcement of child support obligations; if it had had a substantially similar commission or council within 5 years of the law's enactment; or if the Secretary determined that the State was making satisfactory progress toward fully effective child support enforcement.

Each commission was to present its report to the Governor, and make it available to the public October 1, 1985. The following is a compilation of commission reports that have been summarized and organized by similar topics. Although the summaries represent a shortening and reorganization, they retain the meaning of the original commission reports. This document includes all reports that were received in time for publication.

Although the details of the child support enforcement organization and procedure vary widely from one State to another, the commissions' reports reveal several common themes, which are discussed briefly in this executive summary. The variety of approaches to solving commonly identified problems is so great, and often so specific to a given State's situation, that the executive summary does not attempt to address State-specific recommendations. Instead, the reader is referred to the individual summaries of the reports themselves. If you desire a full State report, this can be requested from the State chairperson or the Governor's office, addresses of which are found in the appendices.

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## ADMINISTRATIVE AND JUDICIAL ORGANIZATION

### Administration

In most States, child support enforcement is the responsibility of some branch or division of the human services or welfare department. However, various aspects of enforcement are assigned to other departments or agencies -- the attorney general, county prosecutors, and so on. Almost every commission reports that fragmentation of child support-related services presents problems in coordination, control, and timeliness. In many cases, these difficulties are exacerbated by a lack of adequate computerization, or adequate integration of computer systems, to track cases through the overall enforcement system.

Although many commissions cited the need for greater centralization, very few actually proposed significant changes in the present administrative structure. Some commissions expressed concern, however, that there may be a conflict of interest when the same agency administers both public assistance programs, which are designed to distribute benefits to every eligible citizen, and the child support enforcement program, which is designed not to disburse but to collect payments.

Child support enforcement is frequently assigned a lower priority than other services. This is true at both the State and county levels. In many instances, support enforcement is simply a side line, largely unrelated to the main work of the entity or agency to which it is assigned.

### The Courts

The major court-related problems appear to be delays and backlogs in disposing of cases. Recent Federal regulations set specific time frames for the disposition of cases, and many States are not yet meeting these requirements.

There is also a Federal requirement that States create an expedited process for dealing with child support and related matters. This process can be either administrative or quasi-judicial, and different commission reports stress the advantages of one system or the other. Many States are still studying the issue.

Some reports question the advisability of using an adversarial system for functions such as setting child support amounts. The adversarial system, they argued, may not be in the best interests of the child. Many commissions call for increased mediation of disputes.

A number of reports suggest the creation of specialized domestic or family relations courts. There is also a widespread perception of a need for better training of judges, court personnel, and attorneys, so that they are more sensitive to the issues involved in child support cases.

# CHILD SUPPORT

## Amount of Support

Public Law 98-378 requires that by October 1, 1987, all States have in place statewide, objective, numerical guidelines for determining child support obligations.

These guidelines are needed not only to increase the amount of support but also to add some degree of uniformity to support awards. Many commissions reported that one of the chief complaints they heard in public testimony from custodial and noncustodial parents alike was that support amounts appear to be set arbitrarily by the courts. Without standards, awards vary from court to court and case to case, even for families with similar circumstances and similar resources.

Only a few States have statewide guidelines; the others are still struggling to develop or adopt a formula that they feel is reasonable and fair to all parties. Should the guidelines be based on both parents' income, or just on the absent parent's? Should gross income or net income be used as the basis? If net income is chosen, what deductions should be allowed? Should the formula make allowances for responsibilities to a subsequent family? Should a second spouse's income be taken into account? Should the amount of support ordered vary according to the ages of the children? The commission reports discuss these and other issues.

## Modification

Several reports discuss the difficulty of modifying support orders. This is often a costly, time-consuming process, whether the amount is being increased or decreased. A number of commissions suggest the need for simplifying modification, eliminating the need for attorneys and court appearances. In some cases, the proposed guidelines provide for virtually automatic modification.

## Collection

The States employ a variety of mechanisms for collecting and disbursing support payments. Some commissions considered the desirability of having all ordered support payments made through the court clerk or some other central agency.

Insufficient automation in recording and tracking payments is seen as a major obstacle in most cases, as is insufficient staffing. Delinquencies are sometimes undetected for 2 or 3 months (or longer). For those families that do not receive public assistance and thus are especially dependent on child support, this lack of timeliness results in hardship.

## Enforcement

Throughout the Nation, States are changing laws or amending regulations to meet Federal requirements that certain proven enforcement remedies be made available to all who need them. Among the most effective methods of enforcement are wage withholding and interception of State and Federal income tax refunds.

Wage withholding statutes are being broadened in many States, and the procedure is being made mandatory and automatic. One State, Texas, uses immediate wage attachment in all support orders, and several others are considering that step.

Self-employed noncustodial parents present special problems. Their income and assets are difficult to identify. A number of commissions have sought ways to reach these income and assets to collect support.

Some reports recommend that the range of automatic intercepts be expanded beyond Federal requirements to include, for example, State or city pensions, lotteries, or railroad retirement benefits. Such expansion requires a high degree of computerization and access to a number of data bases. In some cases, commissions found that the payoff may not justify the cost.

Placing liens on real and personal property is another effective enforcement mechanism. In many States, however, to be truly effective, liens must be recorded separately in each county. Several commissions note that a statewide lien would significantly increase effectiveness.

A few commissions question the feasibility of requiring noncustodial parents, particularly those who are self-employed, to post a bond or other security to guarantee payment of child support. Bonding companies are reluctant to enter such agreements.

Contempt-of-court proceedings are still commonly used to enforce support. A number of reports question the effectiveness of this remedy, whether the contempt is civil or criminal. Judges are frequently reluctant to impose harsh penalties like incarceration, even though the threat of going to jail is a good inducement to pay.

In addition, contempt proceedings are time-consuming and costly. The expense may sometimes deter custodial parents from taking action. Numerous commissions also raise the issue of whether defendants in contempt cases should be afforded free legal counsel, either through public defenders or through contracts with private attorneys.

Of course, no remedy is effective if the obligated parent cannot be located. Some commissions call for greater access to data bases kept by various State and Federal agencies.

### Availability of Services

Since 1975, States have been required by law to make child support enforcement services available to both families who receive Aid to Families with Dependent Children (AFDC) benefits and to those who do not. The 1984 amendments reiterate this requirement and mandate that States publicize the availability of such services through public service announcements.

In assessing the extent to which services are available in their States, many commissions found that relatively few non-AFDC families are being served. The level of service for all families, AFDC and non-AFDC, in some States varies from jurisdiction to jurisdiction.

The reports indicate that many child support enforcement agencies are understaffed and underfunded. As a result, staff members try to manage very large caseloads. Under such circumstances, it is virtually impossible to serve all clients, or to serve them equally, and priorities must be set. The cases most likely to defray AFDC costs are worked first, and more difficult cases (paternity establishment cases, for example) receive less attention.

As several reports note, IV-D agencies are revenue makers. With adequate resources and increased automation, these agencies could produce even more money.

## CHILD CUSTODY

Whether as a result of bias or whether it is truly in the best interests of the child, in the great majority of cases the mother is awarded custody. Some commission reports indicate a move toward more consideration of joint legal and/or physical custody as alternatives to the usual sole custody award.

It appears that no arrangement is perfect: Sole custody limits the noncustodial parent's role in the child's life. Joint legal custody requires parents to reach agreement on major decisions affecting the child, and in hostile situations agreement may be hard to reach. Joint physical custody may not be feasible if the parents do not live in the same area or if there is hostility and conflict between them.

## VISITATION

The commissions' discussion of visitation issues generally covered two areas: the relationship between visitation and support, and methods of enforcing visitation rights.

Some commission reports cite research that shows a correlation between regular, high-quality visitation and payment of child support, but no causal relationship has been established. Certainly, however, statements in public hearings offer anecdotal evidence of such a link. Noncustodial parents often testified at public hearings that "She won't let me see my children, so why should I pay support," while custodial parents argued, "He doesn't pay a dime, why should I let him see the children."

Some States establish a legal link between visitation and support. Violations in one area may result in a reduction in the other: the custodial parent who interferes with visitation is subject to a reduction in support payments or, in extreme cases, to a change in custody; the noncustodial parent who is delinquent in support payments may be denied visitation. Other States specifically say the two issues are legally separate. Still other States say nothing explicit one way or the other. Most commission reports agree that visitation and support should be legally separate issues.

Enforcement of visitation rights is both difficult and not rigorously enforced through the courts. Unlike the custodial parent seeking enforcement of a support order, the noncustodial parent in most States receives no assistance from public agencies. At least one State, however, makes the parent locator service available to noncustodial parents attempting to locate their children.

Several commission reports argue that a good first step in making visitation enforceable is to prohibit the use of the term "reasonable visitation" in court orders, or at least to develop some standard of what "reasonable" means. Preferably, visitation rights would be spelled out in the court order.

Among the remedies suggested by various commissions are mandatory mediation; compensatory time for denied visitation; incarceration of the custodial parent, with custody awarded temporarily to the noncustodial parent; and possible change of custody.

A few reports mention the need for more supervised visitation as one way of reducing interference with visitation rights. Local jurisdictions could provide drop-off/pick-up points or facilities for visitation. In a few instances, reports address the problem of the noncustodial parent's failure to visit.

## INTERSTATE ENFORCEMENT

Virtually all States report difficulties with interstate enforcement. Perhaps the most frequently mentioned problems are lack of standard forms and procedures from State to State (and sometimes from county to county) and the low priority typically assigned out-of-State cases. Responding jurisdictions are particularly reluctant to work on paternity cases, in part because the responding State does not want to pay for blood tests when it is the initiating State, they feel, that reaps the benefits if paternity is established.

Many States find the process used under the Uniform Reciprocal Enforcement of Support Act (URESA) cumbersome, and some have adopted other methods of treating interstate cases. One way is simply to register the out-of-State order in the responding State.

There is some disagreement among the commission reports as to whether the responding jurisdiction should have the authority to modify the original order. Several reports suggest that the initial order should be given full faith and credit; a few want more latitude to modify an out-of-State order.

## PATERNITY

Many commissions note that cases involving the establishment of paternity are frequently assigned a low priority because they are thought to be expensive and time-consuming. On the other hand, if paternity is not established in out-of-wedlock births, the child is denied financial support and other benefits of acknowledged paternity and the likelihood of the mother and child joining the AFDC rolls increases.

Some reports suggest that unwed mothers should receive more information about their rights to have paternity established and to receive child support, and other possible benefits. They should also be made aware that establishing paternity also gives the father certain rights, such as the right to visitation and, potentially, to custody of the child.

Several States note that their statutes have not kept up with the state of the art in genetic testing. There are numerous recommendations in the commission reports that blood tests with a given level of accuracy be deemed presumptive proof of paternity.

Another issue mentioned in several reports is whether defendants in paternity cases should be afforded the right to free legal counsel if they cannot afford an attorney. Some States already have such a provision; others are considering it.

## PUBLIC EDUCATION AND AWARENESS

Many commissions note a need for increased public education and awareness. The public needs to know what child support enforcement services are available and how to procure those services. Finally, some commissions suggest that public awareness could help increase societal pressure on all parents, whether or not they were ever married, to support their children.

# SUMMARIES OF STATE COMMISSION REPORTS

# Alabama

Leon Frazier, Chairman

In November 1984, Governor George C. Wallace appointed the Commission on Child Support for the State of Alabama. This commission held an 8-hour hearing on April 5, 1985, in Montgomery. Those who testified at the hearing represented all levels of income except the exceptionally rich.

The commission found that Alabama's child support program already complies with many of the new requirements of Public Law 98-378, the Child Support Enforcement Amendments of 1984. In order to achieve final compliance, however, legislation was needed. Therefore, the Alabama Department of Pensions and Security (acting on the commission's recommendations) proposed six bills, four of which were mandated by Federal law and two of which were not, in the 1985 session of the Alabama State Legislature. This legislation did not pass in that session, so the Department of Pensions and Security plans to have the bill reintroduced in an upcoming special session or in the 1986 regular session.

## ADMINISTRATIVE AND JUDICIAL ORGANIZATION

### Administration

In Alabama, the Department of Pensions and Security is the single State agency responsible for the IV-D child support enforcement program. Child support staff work in each of the department's 67 county departments of pensions and security, accepting applications for services, opening cases, locating absent parents, gathering information for court hearings, assisting in the establishment of paternity and in the establishment and enforcement of support orders, and, in some cases, collecting support. The department contracts with local district attorneys or private attorneys for prosecution of absent parents. Collection services are provided by clerks of court, district attorneys, or department staff, depending on local practice.

### The Courts

There are few resources for divorcing spouses who wish to use professional mediation services to reach a settlement out of court. Such services may be offered by anyone declaring himself or herself a practitioner, regardless of training or experience.

## CHILD SUPPORT

### Amount of Support

There are no guidelines for determining the amount of child support in Alabama, so the amount of child support payments ordered depends to a tremendous degree on which judge handles the case.

Many judges dealing with custodial parents receiving Aid to Dependent Children (ADC) may only order a token payment or enough to reimburse ADC payments. This overlooks the possibility that the custodial parent may get off ADC and be stuck with an insignificant order that cannot be modified.

### Collection and Enforcement

The actual system of collection and monitoring payments in Alabama is very fragmented. In 32 counties, collection and payment monitoring are handled by court clerks; in 17 counties, by district attorneys; and in 22 counties, by the county department of pensions and security. There is likewise a variety of arrangements for enforcing child support. In 55 counties, prosecution is provided by the district attorney; in 12 counties, by local private attorneys under contract to the Alabama Department of Pensions and Security.

Once support is collected, a complicated distribution of the payment must be made by the State Department of Pensions and Security. The department's current computer system cannot handle this distribution process. The results are numerous errors, delays, and inefficiencies.

In 1980, the Alabama State Legislature passed a law that gave the Department of Pensions and Security additional authority to locate parents owing support through the creation of the Office of State Parent Locators. In 1981, the legislature passed a child support garnishment statute (since repealed) and a law authorizing the interception of State tax refunds to satisfy support debts owed to the Department of Pensions and Security.

In 1984, the legislature passed an income withholding law that replaced the 1981 child support garnishment statute. This new law requires employers to deduct both current and past-due support from the wages of parents owing support.

## CHILD CUSTODY AND VISITATION

Alabama statutes on custody and visitation give broad discretion to the court. No specific authority is included in the statutes for joint custody. Consequently, some judges doubt their authority to grant joint custody, even when it is desired by the parents.

Alabama courts currently have no uniform guidelines for establishing how much visitation time a noncustodial parent may have to spend with the children. Also, visitation orders often contain vague terminology, such as "reasonable visitation time." Such vagueness often results in conflict and frustration between divorced spouses. In addition, the State's paternity statute does not include any reference to visitation.

## INTERSTATE ENFORCEMENT

In late 1984, the American Bar Association developed a model interstate income withholding act designed to meet the requirements of the Child Support Enforcement Amendments of 1984. A version of this act was introduced in the 1985 regular session of the Alabama Legislature, but the bill failed to pass. The legislature did pass the Alabama Uniform Parentage Act in 1984. This act permits interstate adjudication of paternity in cases where the child was conceived in Alabama.

## RECOMMENDATIONS

Many of the commission's recommendations were incorporated into the legislation proposed by the Department of Pensions and Security. Others were sent to the Governor with the recommendation that they be implemented through the courts rather than through State law. Both types of recommendations are discussed below.

### Administrative and Judicial Organization

The commission recommends that the Department of Pensions and Security be charged with: 1) implementing a reliable, automated system to record and track child support payments; 2) establishing child support councils in each jurisdiction; and 3) establishing an application fee for all non-ADC applicants for child support. The commission also recommends that, where possible, district attorneys provide child support prosecution for the Department of Pensions and Security.

The commission also recommends that the Governor appoint a task force to establish certification procedures for divorce mediators.

### Child Support

The recommendations that were incorporated into the pending legislation include improving the enforcement of interstate orders; amending the State Income Withholding Act, the Parent Locator Act, and the Income Tax Offset Act; and enacting a Child Support Bond or Security Act and a Foster Care Support Act.

The commission recommends that the Alabama Supreme Court adopt support amount guidelines for judges to use in setting support payments. While the commission did not specify a formula for use in the State, it did suggest that the guidelines be modeled on those found in a recent Illinois law and that they be based on percentage of net income, rather than on a more complicated formula. Net income here is defined as total gross income less deductions for Federal and State income taxes, and Social Security tax.

Debts owed to private creditors should not be considered in establishing a support obligation. Existing support orders may be considered if the obligated parent is paying them.

The commission decided not to make the guidelines mandatory.

### Child Custody

The commission recommends that the State statute on custody be amended to permit joint custody. This recommendation was incorporated into the proposed legislation.

## Visitation

The commission recommends that State law be amended to permit visitation to be ordered in paternity cases.

## Extended Life of the Commission

The commission recommends that a subgroup of the commission continue until October 1, 1987, to assist with and oversee the implementation of the above recommendations.

## Alaska

Mary A. Nordale, Chairperson

The Alaska Commission on Child Support Enforcement submitted its final report to Governor Bill Sheffield on October 1, 1985. The report summarizes the results of the commission's deliberations and examination of child support-related issues.

To accomplish its goals, the commission formed subcommittees to study different aspects of child support. Each subcommittee investigated its assigned area and submitted its findings and recommendations to the entire commission for approval. The subcommittee reports are included in the commission report.

### ADMINISTRATIVE AND JUDICIAL ORGANIZATION

Alaska's IV-D agency, the Child Support Enforcement Division (CSED), is located in the State Department of Revenue. Sections within CSED are responsible for different facets of child support: establishing and modifying support obligations, including establishing paternity when necessary; collecting payments and enforcing support orders; and locating absent parents.

The report of the program review and collections subcommittee notes some concerns about the operations of CSED: the need for further computerization, understaffing in the establishment and modification section, and possible negative effects of team competition within the collections section, for example. With regard to the team concept, the lack of incentive to share successful procedures and the lack of cross-training from team to team are of particular concern. Competition may also provide a motive for suspending difficult cases.

CSED provides outreach services through local offices in Juneau and Fairbanks, a toll-free telephone number, enforcement officers sent on travel circuits through rural communities, a brochure explaining the program and the services available, and public service advertising. The commission endorses these efforts but believes more communication with public assistance clients is necessary to encourage them to work with the division after they leave the public assistance rolls. In addition, the commission believes it is important to change attitudes so that the local community ethic enforces the responsibility of parents to support their own children.

In Alaska, support obligations may be established and modified either administratively or judicially. The report cites no specific difficulties with the judicial system beyond what one may regard as the "normal" problems of lengthy procedures, the expense of hiring legal counsel, and variation in support amounts.

## CHILD SUPPORT

### Amount of Support

The subcommittee on judicial and administrative procedures and the subcommittee on child support obligations addressed the need for an objective method of setting support amounts. After considering a number of formulas for determining the amount of support to be awarded, the commission chose the method used in Wisconsin as the basis for its own recommendations.

The essential feature of the Wisconsin system is that it consists of fixed percentages of gross income that represent the portion of family income normally used for the support of a child or children. The percentages reflect the contributions of both parents, regardless of whether both are employed outside the home.

In addition to its simplicity, a further advantage of the system is that the amount of support is automatically modified as the noncustodial parent's income rises or falls, making it unnecessary in most cases to seek administrative or judicial modifications.

The Alaska commission recommended certain modifications to the Wisconsin system. These modifications are discussed later in this summary, in the section on recommendations.

### Enforcement

The commission report does not address specific enforcement remedies used in Alaska. It focuses instead on the procedures CSED uses to set priorities for cases to be worked.

The division currently uses three computerized management reports prepared at the end of each month that show cases receiving no payment in the current month, no payment within a 30- to 90-day period, and no payment for 90 days to a year. Those cases with no payment in the current month receive the highest collection priority. At present, the division seldom reaches the third list and sometimes does not complete the second list. Thus, obligors who resist payment for 90 days escape with little or no additional collection effort.

The commission report expresses the hope that the new law requiring mandatory wage withholding when the arrearage equals 1 month's support will shorten the lag time between nonpayment and enforcement activity.

## CHILD CUSTODY

The commission's subcommittee on custody and visitation examined a variety of nontraditional custody arrangements, which the subcommittee report defines as custody arrangements where the non-primary caretaker cares for or visits with the child or children for a period of time in excess of traditional visitation under a sole-custody arrangement.

The subcommittee examined research studies and developed a list of policy considerations concerning the relationship of custody arrangement and the establishment or modification of support. The overriding principle is that the custody label itself should not be the determining factor in granting support awards and setting support levels, because such labels are often misleading.

With respect to joint custody, the subcommittee report makes several suggestions. One suggestion is that courts should inquire into the background of child support agreements if the amount seems incommensurate with the facts of the case -- for example, if the amount of support is lower than the guideline amount. This will help prevent "greymail" -- the practice by which one parent uses improved rights to custody under joint custody legislation to bargain down child support.

The subcommittee also suggests that some method should be devised to safeguard eligibility for benefits under the Aid to Families with Dependent Children (AFDC) program -- perhaps, as in California, by designating one parent the primary caretaker for purposes of determining eligibility for public assistance.

## VISITATION

Both custodial and noncustodial parents complain of visitation violations. There is, however, little research on the prevalence of visitation problems.

As to the relationship of regular, high-quality visitation and the payment of child support, research shows a correlation, but it is not clear whether there is a causal relationship or whether other variables influence the outcome. While it is unclear whether improved visitation enforcement will enhance support compliance, the need to improve such enforcement stands alone.

The subcommittee on custody and visitation catalogued remedies for visitation violations and examined the advantages and disadvantages of each. In some instances, the subcommittee report offers suggestions for improvement. Among the remedies considered are contempt of court/jailing, compensatory visitation, supervised visitation, criminal penalties, mediation of disputes, financial penalties, tort claims, change of custody, and making support and visitation obligations mutually dependent.

With regard to mutual dependency, Alaska is one of only a handful of States to address the issue directly in its statutes. Alaska law provides that interference with visitation rights is not a defense to nonpayment of support.

## INTERSTATE ENFORCEMENT

Alaska's Child Support Enforcement Division has experienced a tremendous intake problem with cases in which Alaska is the responding State in actions taken under the Uniform Reciprocal Enforcement of Support Act (URESA). The backlog at times has been as great as 6 months.

CSED is now contacting the absent parent by letter rather than by summons and complaint. The division reports a more positive response to this method, and orders have increased as a result. Under another new procedure, the support order of another jurisdiction is registered in the State of Alaska rather than using the cumbersome URESA process, which requires the establishment of a second, new order in Alaska. CSED encourages other States to adopt this time-saving procedure.

In cases in which Alaska is the originating jurisdiction, the chief problem is that other States respond very slowly and timeframes for follow-up are too lengthy. The commission urges CSED to accelerate its follow-up with other States, using direct telephone contact rather than letters when the delay is 90 days or longer.

CSED has received Federal funding to act as the lead State in a 31-month-long, five-State consortium to develop a Western Interstate Child Support Enforcement Clearinghouse computerized information system. The other States involved are Idaho, Oregon, Washington, and Utah.

### Paternity

Compared to the number of cases currently awaiting action in CSED, few paternity determinations are made. Time and expense factors and limited staffing seem to be the most significant difficulties in this area. In addition, the current statute limits the division to establishing paternity only upon voluntary application by the mother or other legal guardian. Frequently, fathers are willing to cooperate, but the mother refuses to apply.

## RECOMMENDATIONS

### Administrative and Judicial Organization

The commission recommends increased training for employees in the collections section through workshops and seminars.

### Child Support

The commission recommends the development of a formula for judicial and administrative establishment and modification of support orders that is based on a percentage of the combined adjusted gross incomes of both parents. The total support obligation should include an add-on for the custodial parent's work-related day care expenses.

The standard for establishing support should be included in State statutes.

The formula should be used presumptively, but the amount of support awarded can be modified in exceptional cases. The reasons for any departure should be set forth in the order and should be based upon specific findings. When child support is based upon a traditional subsistence lifestyle, that lifestyle should be taken into account.

CSED should be authorized to verify amounts of child support payable for orders using the presumptive-use formula. This service should be provided at the request of any custodial or noncustodial parent, not just those in the IV-D program.

A monitoring system should be established to see whether child support standards are equitably applied.

As a matter of public education, the commission recommends that CSED disseminate information on the typical cost of child-raising and the costs of dividing a family into two separate households.

The commission recommends that CSED review all cases at least annually.

## Child Custody

The commission recommends that the Governor urge the Alaska Supreme Court to implement a rule directing mandatory custody investigations in all dissolutions.

Although joint custody may be appropriate in some cases, the commission recommends that it not be a legal requirement.

## Visitation

The commission recommends that legislation be enacted to provide additional remedies for visitation violations. The commission strongly believes, however, that there should be no linkage between visitation enforcement and child support enforcement.

## Interstate Enforcement

The commission recommends that the Federal Office of Child Support Enforcement be petitioned to promulgate regulations establishing standards of timeliness in responding to and processing interstate claims.

The commission also recommends that Federal legislation be enacted to permit the interstate establishment of parentage through use of the Revised Uniform Reciprocal Enforcement of Support Act. Such legislation would help make up for the fact that not all States have long-arm statutes.

## Paternity

The commission recommends that Alaska statutes be amended to permit CSED to initiate the establishment of parentage.

Because the commission did not have time to address all paternity-related issues, the commission recommends that issues such as protection from child support obligations for anonymous sperm donors be researched and addressed later.

## Arkansas

Lee A. Munson, Chairman

The Arkansas Commission on Child Support, created in November 1984, was charged with examining and evaluating all aspects of the State's child support system as well as determining the effectiveness of the State's Child Support Enforcement Unit (CSEU). Four committees were formed, interim reports were presented to the full commission on June 14, 1985, and final, approved reports were adopted by the commission on September 18, 1985.

### ADMINISTRATIVE AND JUDICIAL ORGANIZATION

The Arkansas CSEU, established in 1976 as the State's IV-D agency, has been greatly affected by reorganization. CSEU operated under the Division of Social Services until the division was abolished effective July 1, 1985. The current transitional scheme places the CSEU under the Division of Economic and Medical Services, Arkansas Department of Human Services.

CSEU is divided into three managerial divisions: systems, programs, and operations. The actual operation of collecting child support falls on the investigative/legal staff.

### Problems

Comparisons of the State's IV-D operation with other States' agencies and interviews with agency personnel revealed a need for spelling out the program's mission and arriving at the most effective position for the agency within the State government's structure. The agency's cost-effectiveness is presently endangered by loss of income from new passthrough provisions, and the commission questions whether the program is intended to be a collection-agency business or a human service agency with costs supported by State funding.

The program's placement within the State Department of Human Services appears problematic, in that the approaches necessary to collect payment in CSEU are diametrically opposite to those necessary to disburse payments in the other agencies within the department.

Surveys of State personnel pointed out additional operating problems, including inadequate communication between CSEU and its field offices, inflexible personnel policies, excessive caseloads, and inadequate public education about CSEU services and procedures. Non-CSEU personnel cited such problems as court delays and lack of understanding about collection processes.

The judicial system in the State poses difficulties as well. Because the system is not unified, support cases for children born of a marriage are docketed in chancery court, while cases for children born outside of marriage are tried in county court.

## CHILD SUPPORT

### Amount of Support

The State currently uses standards stipulated in the family support chart found within the Arkansas Bar Association domestic relations manual. The commission found the chart to be out of line with current pay scales and therefore proposes a draft revision of the chart as well as a draft of a monthly take-home-pay family support chart. Suggestions for using the chart are outlined, including consideration of self-employed payors and multiple families.

The commission strongly endorses both joint custody and voluntary mediation between parties as two approaches that may mitigate the economic impact of divorce.

### Collection

CSEU uses two different methods to collect payments: 1) contracts between the unit and a local government unit (prosecuting attorneys and county judges); and 2) State teams in regional field offices. Attorneys on each team are responsible for obtaining and/or enforcing court orders for support.

The actual collection process begins after the chancellor orders the noncustodial parent to pay a specific amount as child support. The noncustodial parent may pay the amount to the custodial parent or pass the amount through the county clerk's office.

A telephone survey revealed that a large majority of circuit clerks use a manual ledger method to record support payments. There is no uniform system for allowing for postage and handling expenses, and in many cases the office absorbs those costs.

## INTERSTATE ENFORCEMENT

The Arkansas legislature passed Act 989 to comply with Federal requirements for expediting processes regarding intra- and interstate child support cases. The act specifies that the chancery judge shall designate at least 1 day per month in each county for docketing and hearing cases regarding child support orders. A survey completed by 25 of the State's 37 chancellors revealed that the 1-day designation was generally carried out across the State.

The commission's legal committee, however, notes the difficulties involved in this provision due to the State's divided court system.

## VISITATION

The commission limited its study of the visitation issue to concerns arising from interstate cases. A survey completed by 26 of 37 chancery judges indicated a desire to adjudicate visitation in cases brought under the Uniform Reciprocal Enforcement of Support Act (URESA), and 20 favored modification of URESA to include visitation. Relocation of the parties out of the jurisdiction where the divorce was granted appeared to affect the courts' desire to adjudicate visitation.

## RECOMMENDATIONS

### Administrative and Judicial Organization

The commission advocates an analysis of the reorganization of the CSEU. Analysis should focus on the mission of the program and its relationship to other State agencies. Increased public awareness of CSEU's functions should be provided through easy-to-read materials.

### Child Support

The commission proposes adoption of a revised family support chart and accompanying suggestions for equitable and uniform use of the chart. The commission further urges chancery judges to consider alternate methods of calculating child support where appropriate.

A uniform method for collecting child support by county clerks should be established, along with uniform fees for handling.

A committee on support monitoring suggests acquiring Federal assistance for automating a central clearinghouse to monitor all child support payments.

### Visitation in Interstate Cases

The commission advocates modifying URESA to take into consideration issues related to visitation.

# California

DeWayne Holmdahl, Chairman

The California Commission on Child Support Development and Enforcement was founded in April 1983 by executive order of Governor George Deukmejian. The commission's charge was to examine the limitations and needs of the California child support system and make recommendations for improvements. The basic premises underlying the commission's work were that all parents in California should support their children to the full extent of their ability and that the same enforcement services should be available to all families, whether or not they receive public assistance. The commission's final report, dated January 1985, summarizes final findings and recommendations.

## ADMINISTRATIVE AND JUDICIAL ORGANIZATION

The California Department of Social Services (DSS) is the State IV-D agency. The commission report notes two concerns about the present administrative structure. One is that there may be an inherent conflict of interest between IV-D components, which are responsible for establishing and enforcing child support orders, and IV-A components, which are responsible for seeing that all eligible applicants receive welfare benefits. The second concern is the perceived diffusion of resources within DSS and other agencies; the California Parent Locator Service, for example, is located in the office of the attorney general.

The commission discussed the possibility of creating a separate State Department of Family Responsibility, but the majority felt that any problems should be addressed within the present administrative structure.

At the county level, the IV-D program is administered by the district attorney's office. In its report, the commission notes some difficulties with this arrangement. The child support program may be unwieldy for the district attorney to manage. Child support enforcement may conflict with some of the district attorney's other responsibilities, and some child support activities are beyond the scope of criminal litigation that most district attorneys consider their primary responsibility. The majority felt that the cost of separate administration at the county level would outweigh the advantage of focusing responsibility for the child support program.

Without a court order fixing a support amount, the parental obligation to support children is unenforceable. Approximately half the child support cases in California are presently without such an order. The commission weighed the advantages and disadvantages of civil and criminal procedures for obtaining support orders. Its conclusion was that if the civil enforcement process could be served with the same efficiency as is a criminal warrant, and if coercive penalties in civil cases were similar to those in criminal cases, the civil process, in the long run, would be the more effective method.

The commission also considered the desirability of developing an administrative or quasi-judicial system of issuing support orders and concluded that the present judicial process should be left in place.

## CHILD SUPPORT

### Amount of Support

In California, as in other States, the amount of child support ordered varies from court to court, and the amount awarded is often too low to keep the custodial parent and children off the public assistance rolls.

To alleviate these problems, in 1984, the State legislature passed a bill (AB 1527) that sets minimum awards based on the amount of public assistance a child would receive under the Aid to Families with Dependent Children (AFDC) program. A supplement is awarded for special needs, and subsequent family allowances are made if a hardship occurs. The method for calculating awards under this bill takes into account the net income of both parents. The court is encouraged to make more than the minimum award.

In its deliberations, the commission evaluated this 1984 law and five other schedules. Of the six alternatives, the one that the commission prefers is the Minnesota schedule. Minnesota considers only the noncustodial parent's net income (gross income less taxes, mandatory retirement, union dues, and health insurance coverage) in setting the support award. The percentage of net income the noncustodial parent is ordered to pay is geared to the number of children to be supported. Because the Minnesota schedule was based on economic criteria applicable only to Minnesota, the California commission devised its own schedule, which it suggests should replace current California law.

### Collection and Enforcement

In its examination of collection and enforcement practices, the commission looked for ways to increase the number of cases that receive effective legal action without requiring more staff and funding for local offices. At present, because of staffing shortages, traditional enforcement methods are not always available locally. Also, existing enforcement techniques are effective against wage earners, but they often cannot be used when the obligor is self-employed or does not receive a regular salary.

The success of automatic intercepts accounts for most of the increased collections during the last few years. For that reason, the commission suggests establishing more such systems.

Another possible enforcement technique is the expansion of the lien system. For over 24 years, State law has allowed child support court orders (judgments) to be recorded in individual county recorders' offices. Once a certified judgment is recorded, it results in an encumbrance on any real property the obligor parent owns or later purchases in the county of record. But the parent can easily avoid this enforcement remedy by owning property in other counties. In addition, recording policies differ from one county to another.

A centralized, statewide recording system would be more effective. The report discusses various ways of setting up such a system.

The commission report also suggests that county agencies would use their resources most efficiently by working first with cases which show the highest earnings and the greatest collection potential. Two State agencies collect assets information: the Employment Development Department and the Franchise Tax Board. Caseload matching, preferably through a statewide system, would help counties set enforcement priorities.

Not all support enforcement cases go through the public IV-D system. California also permits private enforcement. In cases that are privately enforced, payment is made directly to the custodial parent, without flowing through a public agency. The commission report recommends that this system be kept in place to augment the public system.

## CHILD CUSTODY AND VISITATION

California has one of the Nation's most advanced statutory systems of custody and visitation mediation and enforcement. The State's child-stealing statutes are a national model. Parent locator data can be used to enforce visitation and custody orders. State law provides for mandatory mediation for all parties, whether or not they are represented by legal counsel.

But implementation of the statutes is less than satisfactory, the report indicates, partly because financing has lagged behind legislation. Also, the compulsory mediation statute has not been uniformly interpreted to provide equal access to court mediators in every county.

The commission does not consider support and visitation concurrent rights. One may be imposed and the other rightfully denied. But both are important, and both should be enforced. The commission discussed at length the importance of protecting and equitably administering a father's parental rights under various sets of circumstances.

## PATERNITY

Under current California law, it is up to the mother to name the father on the birth certificate. She may choose not to name the father, or she may make up a name, or she may name someone who is not the father. This system makes it less likely in some cases that paternity will be established, thereby denying both father and child potential rights, as well as making it impossible to collect child support from the father.

California case law has not kept pace with technology or the existing state of the law concerning the rights and duties of child support agencies. Some States, such as Colorado, have created presumptions of paternity on the basis of certain minimum probabilities. Such presumptions and other ways of simplifying litigation of paternity cases should be used in California.

Right to counsel for defendants in paternity cases is a problem. One solution is to permit counties to use the public defender or to contract with private counsel to represent indigent defendants.

In addition, educational programs are needed to teach children that it is socially unacceptable to father a child without assuming responsibility for that child.

## RECOMMENDATIONS

Virtually all of the commission's recommendations received unanimous support. Two members dissented from the recommendation concerning the organizational placement of the child support program at State and local levels.

### Administrative and Judicial Organization

The commission concluded that it is inappropriate to relocate responsibility for child support enforcement at State and local levels.

The commission concluded that there is no need to organize a separate child support judiciary so long as significant reforms can be instituted within the present system. Suggested reforms include instituting better training and control of court clerical personnel, strengthening the public child support accounting system, and possibly delegating interim orders and post-judgment enforcement hearings to superior court commissioners.

### Child Support

California should adopt a uniform schedule of support based on the noncustodial parent's net income and should mandate its use in all courts. According to the recommended schedule, the percentage of the parent's net income available for child support would increase as the amount of income and the number of children to be supported increase.

The commission makes a number of recommendations regarding administrative and judicial procedures in child support cases. For instance, the commission recommends that procedures for temporarily deferring support payments in hardship cases be clearly specified and that a simplified method of calculating interest on past-due payments be used.

The commission also recommends that coercive penalties (such as contempt of court) for nonpayment of support be strengthened.

Wage-assignment statutes should be strengthened and broadened. In California, the cumulative delinquency that triggers wage assignment must occur within 24 months; Federal law sets no such time limit. Private counsel should be allowed to use wage assignment to get payments directly from the employer to the family.

The State should explore the possibility of implementing a disability-insurance intercept system, similar to the one used for unemployment insurance payments.

County child support agencies should periodically obtain earnings and employment information for all parents in their files who have been or may be ordered to pay child support. This asset information can be used to set enforcement priorities, in order to increase collections without increasing costs.

California should establish a central child support lien system, so that if the parent falls behind in support payments, back payments would have to be satisfied before the parent could complete any real estate transaction.

## Child Custody and Visitation

Visitation and custody enforcement should be strengthened. The legislature should provide funds for prevention and prosecution of child stealing and for prosecution of visitation violations.

State law should make it clear that a family with a visitation dispute may compel mediation without legal counsel.

## Interstate Enforcement

California should amend its interstate enforcement statute to state specifically that a California obligor may not receive an award of attorney's fees in actions brought under that statute.

## Paternity

State law should be changed to require both parents to sign the birth certificate. When the father does not sign, the matter should be referred to the county child support agency for investigation and possible establishment of paternity.

Blood test results with a 98 percent probability finding should be recognized legislatively as sufficient to create a presumption of paternity.

As an incentive to counties to undertake more paternity cases, the State should pay 25 percent of the costs involved in such cases. Under this arrangement, the Federal share would be 70 percent, the State share 25 percent, and the local share only 5 percent. The commission estimates that this would result in significant savings within 4 or 5 years.

## Colorado

Faye Fleming, Chairperson

The Colorado Commission on Child Support has presented an interim report to Governor Richard D. Lamm. The interim report was based on briefings from commission members and other experts, two public hearings, one hearing with the legal community, a review of child support systems in other States, and extensive written submissions.

### ADMINISTRATIVE AND JUDICIAL ORGANIZATION

The commission noted dissatisfaction with Colorado's administrative and judicial structures relating to child support, custody, and visitation. Over the years, they have developed in a fragmented and uncoordinated manner, creating major gaps and unresolved conflicts in defining and enforcing rights and obligations.

#### Administration

The child support enforcement program is administered by 63 county departments of social services, supervised by the Colorado Department of Social Services. Each jurisdiction has its own procedures and forms. This lack of standardization means that there can be no statewide training -- indeed, there is no ongoing training program for staff at any level.

The quality of services varies from county to county. The State agency devotes more time and resources to large counties than to small ones, and the level of commitment to the child support program differs from one county to the next. The lower priority afforded the program is shown in inadequate staffing and insufficient funding.

A further problem is inaccurate, incomplete, and late reporting by county child support enforcement units. Multiple filing of cases concerning the same parties results in a gross overstatement of each county's caseload.

Colorado ranks 31st nationally in cost-effectiveness for collections in AFDC cases; with respect to non-AFDC cases, it ranks 38th. The commission attributes this poor showing to the fragmented county administration system. The system is inefficient and ineffective largely because of duplication of activity.

#### The Courts

Although Colorado has "no fault" divorce, its system for setting support amounts and deciding custody and visitation issues is an adversarial one. The commission report notes that courts and attorneys are needed to resolve almost every issue.

Referees are used only in larger counties, and their usefulness is limited because some local jurisdictions restrict the referees' authority. As a result, domestic relations courts are backlogged. The backlog is increased by relitigation of support, custody, and visitation issues, in spite of unduly rigid statutes designed to minimize such relitigation.

The public lacks confidence in the judicial system, which it sees as having little commitment to family law. In addition, the procedures are confusing, expensive, and difficult of access.

## CHILD SUPPORT

### Amount of Support

At present, Colorado has no uniform, objective standards for support awards. The awards granted by the courts are inconsistent and often insufficient. This contributes to a lack of confidence in the fairness of the system.

In addition, it is often difficult to determine the veracity of the financial affidavits that are the basis for awards. Preventive measures and sanctions for false or misleading affidavits are lacking.

### Collection and Enforcement

As was noted earlier, the child support services offered and the vigor with which enforcement is pursued vary from jurisdiction to jurisdiction. Each unit is free to set its own priorities for clients and services provided.

## CHILD CUSTODY AND VISITATION

Custody awards in Colorado are made predominantly to the mother; fathers gain sole custody in 10 percent of cases; another 20 percent are joint custody awards.

The commission found that the lack of uniform standards and qualifications for expert witnesses in custody cases decreases public confidence in the system.

Services equivalent to the child support program are not available for custody and visitation enforcement. Few statutory remedies are available, and those that are, such as contempt of court, are ineffective. When visitation rights are denied, support payments often cease. There is compensation for missed support payments. There is no compensation for missed visitation.

## RECOMMENDATIONS

The Colorado commission's interim recommendations focus almost exclusively on restructuring the State's family law system, merging the existing fragmented system into a cohesive whole.

## Administrative and Judicial Organization

The State should create a family law court with separate rules and procedures, divided into districts and staffed by judges, referees, mediators, and support staff. Judges would hear only the most complex issues; referees would hear all other legal issues. All parties would submit to mandatory mediation, except in default cases.

There should be a State Office of Enforcement under the supreme court, analogous to the public defender's office. The administrator of this office would carry out child support enforcement functions, as well as newly created programs of custody and visitation enforcement. Local enforcement offices would be organized consistent with family law court districts, and county attorneys, district attorneys, and so on would provide services under contract.

Forms and procedures should be standardized throughout the State.

In support, custody, and visitation cases, courts should follow standard guidelines. The commission's final report is expected to include a support formula, recommendations for the formula's utilization, and a children's bill of rights.

## Continued Life of Commission

The commission recommends that its existence be extended until December 31, 1986, so that it can address remaining issues and further refine its interim recommendations.

# Connecticut

Samuel V. Schoonmaker III, Chairman

In 1983, Connecticut appointed a task force to study the State's child support enforcement system. Many of the task force's recommendations were included in legislation subsequently passed by the general assembly. As a result, Connecticut could have requested a waiver of the Federal law (Public Law 98-378, the Child Support Enforcement Amendments of 1984) requiring States to establish child support commissions. Instead, Governor William A. O'Neill chose to expand the work of the task force by creating the larger, more broadly based Connecticut Commission on Child Support Enforcement.

To carry out its work, the commission formed four subcommittees to study each of four main areas: remedies for the enforcement of child support orders; child support guidelines; automation and administration of enforcement procedures; and enforcement of visitation rights and the relationship between support and visitation. The commission's final report, which was presented to Governor O'Neill in September 1985, contains the reports and recommendations of these subcommittees.

## ADMINISTRATIVE AND JUDICIAL ORGANIZATION

Connecticut's IV-D agency is located in the State Department of Human Resources. Other agencies directly involved in child support collection are the Family Division of the Judicial Department and the attorney general.

Each year, the State's courts handle over 250,500 child support actions. These include paternity; cases involving families receiving Aid to Families with Dependent Children (AFDC) benefits; enforcement actions, mostly contempt; initial divorce filings; and, in 200,000 cases, by far the largest category, motions for modification and pendente lite orders.

It appears that Connecticut does not meet the time frames that the Federal Office of Child Support Enforcement has set for disposition of cases. Among the reasons for delays are duplication of effort, the procedure for servicing summons and docketing cases, and continuances of court cases. Another contributing factor is the antiquated, overburdened information system used by the Bureau of Collection Services, which operates the information center for most child support accounts.

## CHILD SUPPORT

### Amount of Support

After several meetings, a public hearing, and much discussion, the subcommittee on child support guidelines adopted the report of a previous Commission on Family Support Guidelines. The interagency Commission on Family Support Guidelines was created by Special Act 84-74 (an Act Concerning Mediation in Dissolution Proceedings) to develop family support guidelines to be used by family relations counselors in pilot programs in two judicial districts, Litchfield and Fairfield.

The purpose of the guidelines is to provide a framework that considers the unique characteristics of each family. The guidelines are based on expected levels of support to be provided by a spouse or parent, depending on the income and current situation of each adult, total family income, and the number of persons in need of support. The weekly support schedule also considers the ages of the children. The guidelines were developed using Department of Labor and Department of Agriculture figures as a base.

Family relations counselors were trained in the use of the guidelines, and the guidelines were field tested for 3 months. Comments from persons involved in the testing were generally positive, and the Commission on Family Support Guidelines concluded that the guidelines are practical and beneficial.

### Enforcement

In July 1985, Governor O'Neill signed into law Public Act 85-548, an Act Implementing the Federal Child Support Amendments of 1984. That act was based on proposed Federal regulations. The final Federal regulations differed substantially in certain areas, so further amendments to the State law will be necessary to bring Connecticut into compliance. These amendments are summarized in the "Recommendations" section of this report.

The subcommittee on enforcement also identified problem areas that limit the effectiveness and efficiency of support enforcement efforts in Connecticut. The subcommittee sees a need for:

- more efficient location of absent parents
- improved service of legal process
- mandatory mediation prior to the establishment or modification of support orders
- improved public education to provide information on options, laws, and procedures related to support enforcement
- increased program staffing
- easier access to adjudicating authority

## CHILD CUSTODY AND VISITATION

Connecticut law, with respect to enforcing visitation rights and defining and regulating the relationship between support and visitation rights, is virtually nonexistent. Normally, the court awards the "right of reasonable visitation" to the noncustodial parent. The State has no statute or regulatory process that defines "reasonable" or attempts to oversee or protect visitation rights.

Relatively few spouses deny or interfere with the visitation rights of noncustodial parents. When such offenses occur, however, enforcement is unwieldy, uncertain, and costly. Because custody is based on notions of what is best for the children involved, most obvious methods of enforcing visitation decrees -- reducing or terminating support, imposing fines, jailing the custodial parent, and transferring custody -- are either counterproductive, unproductive, or both.

Experience indicates that most "recalcitrant" custodial parents respond to very specific visitation plans and mandatory mediation. In a very few cases, only incarceration or reassignment of custody is effective.

## INTERSTATE ENFORCEMENT

The interstate support system, in the view of the enforcement subcommittee, is confusing, ponderous, and ineffective. The laws of the various States, as well as counties within States, are inconsistent. Foreign jurisdictions do little to locate individuals within their boundaries or to take actions needed to bring obligated parents before the court to establish or enforce support obligations.

The current system of providing legal representation to an out-of-State petitioner in a URESA action is inadequate. The State contracts with a private attorney to represent the petitioner's interests. The quality of representation varies from case to case, and there is a need for more uniform representation. Also, many times the court enters an order but modifies the award downward because the obligor shows up to plead his case.

## RECOMMENDATIONS

### Administrative and Judicial Organization

After reviewing both quasi-judicial and administrative processes used by other States, the subcommittee on expedited process recommends that a quasi-judicial system be set up in Connecticut. Magistrates would review only IV-D child support cases. Their duties would include establishing and modifying child support awards, acting as fact-finder in paternity and contempt cases, and filing paternity and support agreements with the clerk of court.

The subcommittee's recommendations address other deficiencies in the current system. For example, the subcommittee recommends that all investigators in child support cases obtain an open-ended summons, rather than one with a 2- to 4-week time limit. The subcommittee also recommends that a toll-free number be set up to aid callers in establishing and enforcing support orders.

The full commission adopted a resolution not contained in the subcommittee report: that legal representation be available to anyone who needs it, at a cost commensurate with the individual's ability to pay. Such costs are not to be charged to the IV-D program.

The subcommittee on enforcement recommends that a family court or specialized division of the court be established to handle child support and other domestic cases.

## Child Support

As noted above, the subcommittee on child support guidelines adopted the report and recommendations of the Commission on Family Support Guidelines. Those recommendations are that:

- the Family Support Commission's proposed guidelines be used statewide by family relations counselors as part of a mediation process
- mediation of support enforcement matters be made mandatory
- the Judicial Department have the necessary resources to ensure that sufficient staff members are available to implement mandatory mediation
- funds be provided for the development and implementation of a scientifically acceptable research component to determine the effectiveness of the guidelines

The subcommittee on enforcement recommends specific amendments to State law to bring Connecticut into compliance with the final Federal regulations implementing Public Law 98-378.

The enforcement subcommittee also makes several recommendations related to the service of process. The subcommittee recommends that all employers be required to cooperate in obtaining personal service on employees during working hours; employers with 10 or more employees should be required to designate a company official to accept service of process on behalf of employees. Certified mail sent to obligated parents in care of employers should be authorized as effective legal service.

Finally, special deputy sheriffs should be appointed to carry out civil arrests (capias/mittimus) of delinquent obligors. Their services would be paid for according to a fee schedule developed by the Department of Human Resources.

## Child Custody and Visitation

The enforcement subcommittee recommends that there be a presumption of joint or shared custody.

The visitation subcommittee recommends that reasonable visitation privileges be made an explicit part of all divorce decrees that involve joint custody. Every visitation complaint should result in mandatory mediation.

When the custodial parent arbitrarily interferes with visitation rights, the noncustodial parent should be allowed to "bank" visitations. Decisions regarding this compensatory time should be made during mediation.

The subcommittee recommends a graduated series of penalties for repeated noncompliance with visitation rights. Possible penalties include imposition of a written plan for visitation, with no variance allowed; a short period of incarceration (the noncustodial parent would take temporary custody); or a change of custody.

### Interstate Enforcement

The subcommittee on enforcement recommends that the commission formally propose the development of a national system of support enforcement.

The expedited process subcommittee recommends that assistant attorneys general represent the interests of the petitioner in a URESA action.

# Delaware

Herman Holloway, Sr., Co-Chair
Jane Maroney, Co-Chair

The Delaware Commission on Child Support Enforcement was appointed in November 1984; the commission's report of its findings is dated September 30, 1985.

The commission's charge was to examine the present child support system, identify its strengths and weaknesses, and recommend steps to improve the system. To gather information about the opinions and concerns of citizens and public interest groups, the commission held four public hearings.

The primary objective of the commission was to draft new legislation to bring Delaware into compliance with the Federal Child Support Enforcement Amendments of 1984 (Public Law 98-378). That legislation, along with other issues addressed by the commission, is discussed in the following summary.

## ADMINISTRATIVE AND JUDICIAL ORGANIZATION

Delaware's IV-D agency is the Division of Child Support Enforcement (DCSE) of the State Department of Health and Social Services. Child support cases and other domestic relations matters are heard in family court.

In cost-effectiveness, Delaware ranks seventh among all child support programs nationally. Given the limitations of the present laws, the State's program is relatively successful.

In the administrative and judicial area, the commission addressed two major concerns: the timeliness of case processing within DCSE and family court and the need for a more comprehensive and effective computer system.

Time is money to the custodial parent who might wait weeks to have a wage attachment processed or a child support order established. Recognizing this concern, and seeing a need for a case-monitoring process, the secretary of Delaware's Department of Health and Social Services (who was also a commission member) directed DCSE to work with the family court to set objectives in terms of days for the time required to accomplish key tasks.Flowcharts depicting the timeframes for various actions are included as an appendix to the commission's report.

Performance monitoring is scheduled to begin in the fall of 1985 when DCSE and family court will conduct a baseline assessment of their real performance against the objectives. Thereafter progress in meeting the objectives will be measured quarterly.

Case processing improvements and changes in legislation would have little impact without proper computer support. The State's existing computer system is over 10 years old and has long since outlived its intended useful life. DCSE has begun a major effort to develop an effective, efficient child support computer system.

The Automated Child Support Enforcement System (ACSES), to be funded 90 percent by the Federal Government, received initial Federal approval in June 1985. As currently planned, the system will be fully developed during 1986 and will begin full operation in early 1987.

When it is completed, ACSES will process support payments within 24 hours and will maintain a complete history of all child support payments owed and paid on each case, enabling management to track and monitor cases. The system will also greatly improve effectiveness in locating absent parents and in enforcing delinquent cases.

## CHILD SUPPORT

Delaware has a tradition of strong enforcement of child support orders. Present law, enacted in 1983, requires the court to issue a wage attachment immediately once the duty to support is established. The hearing officer has the discretion to stay that attachment no later than 7 working days after the due date.

The commission found, however, that the current law fails to meet its objectives. Procedural mechanisms required to enforce the law mean that there is generally a 30- to 60-day lapse between payments when an obligor defaults.

The commission concluded that the only way to improve the situation would be to remove the court's discretion to stay the immediate-withholding order. Accordingly, in a unanimous decision, the commission removed that provision in the draft legislation introduced in the State general assembly, but not yet passed (the senate tabled the bill in a special session on September 30, 1985).

In addition to reducing the amount of time it takes to collect support, automatic immediate attachment of the support obligor's income would have certain other advantages:

1. Since families receiving public assistance only receive a $50 passthrough on current support payments, not on arrears, the change would increase the amount of money they receive.
2. Payment by deduction would be explicit public policy and therefore would have no adverse effect on the obligor's credit rating nor would it cause direct or indirect punitive action by the obligor's employer.
3. Direct deduction would eliminate one source of friction and manipulation between parents and would free court time for other matters, such as interference with visitation rights.

The commission's draft legislation proposes that the maximum allowable delay in payment for all existing orders be 7 working days.

The proposed legislation contains other features designed to bring Delaware into compliance with Public Law 98-378. This major overhaul of existing legislation recommends, among other things, codifying expedited court procedures, publicizing child support services, offsetting State income tax refunds for non-public assistance clients, and making information available to credit reporting agencies. The legislation also makes child support services equally available to public assistance and non-public assistance clients.

## CHILD CUSTODY AND VISITATION

The commission heard a number of concerns about visitation, custody, and divorce issues, and the commission's drafting subcommittee proposed a number of statutory changes. However, in light of the existence of a separate task force on domestic relations law that is also working on legislation, the commission decided to refer its recommended changes to that task force, rather than submit its own somewhat conflicting legislation.

## INTERSTATE ENFORCEMENT

The commission prepared legislation, in the format proposed in the Federal model act, targeting the interstate enforcement problem. The bill (House Bill 231) was passed by the general assembly and signed into law. The statute is designed to facilitate income withholding in any State upon the filing of a petition. Once it is adopted by all States, this legislation will be a considerable improvement over the slower process embodied in the Uniform Reciprocal Enforcement of Support Act.

## RECOMMENDATION

The commission recommends that its life be extended for a year to continue work on legislation, to monitor case processing effectiveness and implementation of new legislation, and to continue to provide a forum for citizens and administrators to discuss issues relating to child support enforcement. The commission anticipates the completion of a final report no later than October 1, 1986.

## Florida

William J. Page, Jr., Chairman

Twenty-five members comprise Florida's State Commission on Child Support created by Governor Bob Graham on November 30, 1984. The commission conducted public hearings in nine cities, calling more than 100 witnesses who testified as custodial and noncustodial parents, grandparents and other family members, public officials, attorneys, law enforcement personnel, judges, and other interested parties. Task forces examined issues related to child support and offered recommendations, which the entire commission then voted upon. The commission's final report is dated September 30, 1985.

### ADMINISTRATIVE AND JUDICIAL ORGANIZATION

The child support program is housed within Florida's Department of Health and Rehabilitative Services (HRS). Administration of the program is not decentralized as it is in other HRS programs, however; the program director for child support enforcement manages the program rather than delegating responsibility to departmental district administrators.

Understaffed and underfunded, the agency serves only 7 percent of families not receiving Aid to Families with Dependent Children (AFDC). Each professional staff member is presently assigned an average of 1,463 cases. Findings from other States show that Florida's workers attempt to serve more than twice as many cases as the national average.

There is a lack of data to permit systemwide evaluation.

### CHILD SUPPORT

#### Amount of Support

Statewide, support awards have been set at highly disparate levels. There are currently no objective guidelines on which to base award decisions.

#### Collection

Clerks of court contract with HRS to manage county depositories for child support collections.

#### Enforcement

Florida ranks lowest (51) among the States and the District of Columbia in providing child support enforcement services to female-headed households.

If an enforcing agency or private attorney cannot persuade a payor to catch up on delinquent payments, a hearing is requested to determine whether the payor is in contempt of court. A guilty verdict can result in a jail sentence, work-release program, fine, or simply an admonition. Use of wage garnishment and property liens, although they have been available in the past, has only recently become widespread.

## VISITATION

In Florida, the doctrine of "unclean hands" has led to the conditioning of support payments on noninterference with visitation rights. The commission found this issue to engender the most heated testimony of any matter and notes that, in the majority of this testimony, the interests of children were not mentioned.

## INTERSTATE ENFORCEMENT

State attorneys have statutory responsibility for interstate child support cases.

## RECOMMENDATIONS

The bulk of the commission's report consists of recommendations; the following section includes only the highlights.

### Administrative and Judicial Organization

The Department of Health and Rehabilitative Services should continue as the designated State agency for child support and expand its scope to include responsibility for interstate child support cases (now the statutory responsibility of State's attorneys). Clerks of court should divest themselves of other child support functions but continue to operate county depositories for child support collections. The organizational placement of the child support enforcement functions in HRS should be improved, and child support workers should receive more equitable status and compensation.

A family court division should be established in the Office of the Courts Administrator. Trained guardians ad litem should be appointed to protect the child while in the adversarial process.

### Child Support

The State should adopt a specific numeric formula for computing support awards. Upon reviewing other States' approaches, the commission advocates the Melson formula used in Delaware and elsewhere. This formula incorporates cost-sharing and income-sharing elements and establishes dollar requirements of basic subsistence for all parties involved. The formula also allocates income to meet those needs and distributes the remaining income equitably among children and parents.

All child support payments ordered by a court of competent jurisdiction and made by an absent parent should be made through a central depository. Depositories should accept payments via credit cards and electronic funds transfer.

Statutes should provide that all orders for child support include a requirement for immediate withholding from wages or other income. The commission offers several recommendations regarding funding of enforcement services, including that all agencies providing support enforcement services should contract with the IV-D agency for those services.

**Custody**

Joint custody must not rule out a child support award. Mediation should be a required first step in all contested divorce, separation, and support proceedings involving issues of custody, visitation, or child support.

**Paternity**

The State should use improved testing and judicial procedures to determine paternity.

**Information Management**

More efficient management should focus on improved communication among child support enforcement systems (e.g., HRS, courts, State's attorneys, etc.), automated case management support, and increased attention to planning.

**Legislation**

The State legislature should enact a single bill to meet the minimum requirements of Federal legislation while also addressing critical areas of child support within the State. Such a bill should include provisions for:

- equal services to both AFDC and non-AFDC children
- improved income withholding provisions, including priority of child support over other legal process against the same income
- expedited processing of child support and paternity cases and extension of the statute of limitations to 18 years in paternity cases
- liens against real and personal property and interception of tax refunds
- reporting information about child support arrearages to consumer credit organizations
- sanctions against employers for refusal of or wrongful withholding, or punitive action against the obligor-employee
- collection of alimony, when included in an order for child support
- inclusion of medical support in child support orders, under certain conditions
- publicizing availability of child support services
- State guidelines for child support awards

In addition, existing criminal laws dealing with neglect and willful or persistent failure to support should be strengthened. Outdated provisions exempting from criminal penalties offenders subject to punishment for contempt of court should be eliminated.

# Georgia

Mary Jane Galer, Chairperson

Governor Joe Frank Harris established the Georgia Commission on Child Support in November 1984, in response to the requirements of the Child Support Enforcement Amendments of 1984 (Public Law 98-378). The commission was instrumental in the drafting and passage of child support reform legislation during the 1985 session of the Georgia Legislature.

The commission's annual report, dated October 1985, includes an executive summary and reports of four committees set up to deal with specific issues: communications, setting of awards, consolidation of services, and custody and visitation. The executive summary lists recommendations made by the September 1984 Support Our Children - Child Support Conference and adopted by the Georgia Commission on Child Support.

## ADMINISTRATIVE AND JUDICIAL ORGANIZATION

The State's IV-D agency is the Office of Child Support Recovery within the Georgia Department of Human Resources. Child support services are not centralized under the Office of Child Support Recovery but are fragmented among a number of entities: district attorneys, probation officers, child support receivers, clerks of court, sheriffs' offices, the judiciary, and, for public assistance cases only, the State's Division of Family and Children Services.

Under this fragmented arrangement, agencies frequently find themselves performing child support functions that are outside their original purpose. In addition, there is a great deal of duplication of effort.

The court system has traditionally been used to set and enforce support orders. Juries are used as fact-finders in child support cases. With the increasing number of cases being brought before the courts, the system is rapidly becoming overburdened.

## CHILD SUPPORT

### Amount of Support

The Georgia Child Support Recovery Act requires the Department of Human Resources to establish a standard for measuring the absent parent's ability to provide child support. There are currently no statewide guidelines for support awards, although at various times individual justices have established and circulated schedules to be used as guides by others.

The report of the commission's committee on setting awards points out that published guidelines help reduce parents' fears that child support awards are largely the product of individual judgment. The schedules tend to increase acceptance of the obligation to pay support and should result in a decreased number of contested cases. The committee report notes that guidelines need to be uniform but not inflexible.

**Collection**

There is no set system or procedure for collecting and distributing child support payments. Probation services, child support receivers, and clerks of court currently perform these functions in most of the State.

**Enforcement**

Like the rest of child support-related functions, enforcement of support orders is fragmented among a number of entities. Sheriffs generally handle the process of servicing and the task of arrest, when necessary. As noted above, the courts have traditionally been the single most effective avenue for enforcing support orders. District attorneys and, in some parts of the State, the Office of Child Support Recovery (through contract with private attorneys) are also involved in enforcement.

Three major enforcement remedies are used in Georgia: tax refund interception, unemployment compensation interception, and registration of foreign support orders. (The last is discussed in a later section of this summary, "Interstate Enforcement.")

Legislation introduced in 1985 strengthens several enforcement methods. The bill authorizes the courts to enforce support orders through civil contempt, in effect giving statutory recognition to a power the courts already have. The provision for voluntary wage assignment is strengthened, as is garnishment.

In addition, the legislation increases the authority of the Department of Human Resources to participate in legal proceedings, enforce support orders, and recover foster care payments made by the State. Other sections of the bill bring Georgia into compliance with Federal law.

## CHILD CUSTODY AND VISITATION

The report of the committee on custody and visitation states that experience has shown that the noncustodial parent is more likely to make child support payments if there is consistent involvement and contact with the child. The resolution of issues pertaining to custody and visitation is vital in determining the child's best interests.

## PUBLIC AWARENESS

The committee on communications identified three problems:

1. The average Georgia citizen is not aware of available child support services.

2. There is no central location for obtaining information about these services.

3. There is a lack of staff to handle the potential influx of applications for assistance.

## RECOMMENDATIONS

The commission members support all recommendations contained in the commission's report.

### Administrative and Judicial Organization

The commission recommends that all functions of Georgia's child support program be centralized in one State agency, to eliminate the present fragmentation.

A computerized procedure should be established to track arrearages and absent parents; information should be shared among State agencies.

With regard to the courts and judicial procedures, the commission recommends that:

- o the jury be replaced as fact-finder in child support cases
- o a court master or court commissioner be appointed within each superior court to hear and adjudicate specific aspects of child support cases
- o legal representation be mandated for non-public assistance child support cases
- o service be provided by regular mail after the first personal visit in child support cases

In addition, the committee on consolidation of services recommends the creation of a special domestic or family court to handle child support and related cases.

### Child Support

The commission recommends that the Georgia judiciary be involved in the development of uniform, statewide guidelines for support awards. The objective of the guidelines should be to maintain the same standard of support as if the family were intact. The guidelines should be flexible enough to allow for judicial discretion. A procedure should be developed for periodic review of support schedules.

The committee on setting awards recommends that child support awards be incorporated as an agenda item in the regularly held seminars for superior court judges and for members of the State bar.

The commission recommends that uniform collection and disbursement procedures be used throughout the State. Child support receivers should be appointed in each jurisdiction.

State law should require the noncustodial parent to post bond or security to ensure payment of child support obligations.

## Child Custody and Visitation

The report of the committee on custody and visitation contains the following recommendations:

1. Mediation of custody disputes should be encouraged.
2. The appointment of a representative for the child who is the subject of a custody dispute should be expressly authorized by law, to assist in determining the best interests of the child.
3. Georgia's declared public policy should be to encourage frequent, continuing contact between minor children and both parents after divorce or separation. Both parents should share the rights and responsibilities of child rearing. Further, shared parental custody should be a legally recognized alternative.
4. The report of the Georgia Commission on Child Support should be widely disseminated, and the commission should seek public support for the implementation of its recommendations.

## Interstate Enforcement

The commission recommends that the Uniform Reciprocal Enforcement of Support Act be expanded to include non-public assistance cases.

## Public Awareness

The commission recommends the development of a program to educate the public about legal rights and available enforcement remedies in child support-related matters.

The committee on communications recommends that a statewide public awareness campaign be carried out each year. In addition, a clearinghouse of child support information should be established and made available to the public through a toll-free telephone line. Members of the judiciary should be educated about the role they play; a seminar or training session should be provided for circuit court judges. Finally, to help handle the anticipated increase in cases, a larger staff should be funded.

# Guam

Mary Lou Taijeron, Chairperson

Governor Ricardo J. Bordallo appointed nine members to the Commission on Child Support Enforcement (one member later resigned). Initially, commission members devoted themselves to detailed orientation regarding the cost and operations of Guam's child support enforcement program. They then turned their attention to reviewing proposed legislation to bring Guam's child support program into compliance with the Child Support Enforcement Amendments of 1984 (Public Law 98-378). When the commission submitted its final report to Governor Bordallo in September 1985, the legislature was considering a bill incorporating a number of the necessary changes.

The commission's report consists of recommendations and a summary of a client satisfaction survey made by the commission.

## ADMINISTRATIVE AND JUDICIAL ORGANIZATION

The commission finds that ineffective use of available staff is a greater problem than understaffing and recommends that supervisory practices in the Child Support Enforcement Office be re-examined. The commission also suggests quarterly administrative reviews of procedures.

Inadequate monitoring of support payments is of particular concern. Without such monitoring, arrears build up. Lack of monitoring also fosters an unconcerned attitude on the part of delinquent parents. The commission recommends that cases be monitored on a monthly basis by both the Child Support Enforcement Office and the attorney.

The commission urges that the Child Support Enforcement Office and the attorney work together to manage cases effectively and to keep clients informed of progress.

Elimination of administrative problems, the commission feels, would improve client satisfaction.

## CHILD SUPPORT

The proposed legislation mandates the establishment of objective standards for support awards, with annual adjustments for the cost of living. The commission recommends that standards be developed as soon as possible and that they be enforced equitably.

The draft bill also establishes procedures for enforcing orders through real property liens and allows for the enforcement of interstate obligations.

## PUBLIC AWARENESS

The commission identified a need for greater public awareness of the availability of child support enforcement services. Rather than concentrating all publicity in one Child Support Awareness Month, as is the current practice, the commission recommends that the Child Support Enforcement Office publicize its services throughout the year through public service announcements and news releases.

## Hawaii

Evelyn Lance, Chairperson

As required by Public Law 98-378, the Governor of Hawaii created the Hawaii Commission on Child Support Enforcement in 1984. Early in its study, the commission formed three subcommittees to concentrate on the following topics: (1) availability, cost, and effectiveness of services to children; (2) parental involvement, visitation, standards of support, and interstate obligations; and (3) required State and Federal legislation. After reviewing and analyzing documentation, reports, legislation, and testimony presented at a public hearing, the commission compiled a final report summarizing the issues surrounding the current and future Hawaii child support enforcement program.

### ADMINISTRATIVE AND JUDICIAL ORGANIZATION

#### Administration

Hawaii's IV-D child support enforcement agency operates within the State Department of Social Services and Housing (DSSH). The IV-D agency is responsible for establishing paternity, establishing court-ordered support obligations, enforcing child support payments, and maintaining support. Maintenance of support includes three primary functions: collecting and distributing support payments; enforcing medical-support requirements; and maintaining the equity of the support order.

In assessing the performance of the IV-D agency, the commission found that the agency met or exceeded the national average in most cases. The report notes, though, that the agency is carrying out only one of three functions related to maintenance of support: the collection and distribution of support payments. Since 1976, the program has saved Hawaii's taxpayers $9.3 million by offsetting AFDC payments.

The commission found that the placement of the agency within DSSH creates certain problems. First, DSSH's lack of commitment to the child support program and the low status of the IV-D unit within DSSH have made it difficult to operate the program effectively. Control problems have arisen because the IV-D administrator does not have authority over functions like budget preparation, negotiation of cooperative agreements, and so on.

The Hawaii commission expressed concern about a perceived conflict in having one umbrella organization with components responsible in one case for distributing AFDC benefits (the IV-A function) and, in the case of the IV-D agency, seeing that absent parents fulfill their responsibilities.

The IV-D agency's placement under the jurisdiction of the IV-A program gives the child support enforcement program a distorted image as a human services or assistance-payments agency. This image affects both IV-D employees, who do not carry out enforcement activities vigorously enough, and delinquent obligors, who tend to ignore dunning letters from an agency associated with providing welfare.

The child support program's fragmentation among several agencies via cooperative agreement presents significant problems of coordination and control. This fragmentation results in duplication of effort. It also prevents the efficient allocation of resources in a time of budget cutbacks and staffing freezes, resulting in backlogs. Thus, the program cannot provide the services required by both State and Federal regulations.

### The Court System

The commission report also cites problems in the court system. There is a lack of automation in the court cashier's office. This office, which is responsible for logging in an average of 12,000 monthly child support payments, still uses an antiquated system of hand entries into ledgers. The backlogs that form at this point cause critical problems for the rest of the enforcement system. Without automation, the situation can only get worse; the extension of services to non-AFDC clients is expected to double the workload.

Other parts of the court system also are plagued by backlogs caused by insufficient staff, lack of automation, and an ineffective system of document management. Extensive delays in processing and issuing court orders and other documents have hindered their effectiveness. Court clerks need more training in dealing with child support case processing.

Judicial inconsistency is seen as a problem, both in the establishment of amounts of child support and in enforcement.

## CHILD SUPPORT

### Amount of Support

In establishing support orders, Hawaii's family courts presently use guidelines promulgated in a 1983 revised court policy memorandum. Except for temporary support standards to be applied until a court order is established, there are no sufficiently specific, uniformly used statutory guidelines for establishing support amounts.

The lack of a basic standard of adequate support has led to a substantial variation in the amount of support ordered on behalf of families with like circumstances and resources. In most cases, even when the noncustodial parent has considerable payment ability, the amount ordered falls far short of that required to provide even the minimal, basic necessities of life for the children involved.

The commission also addressed the issue of modification of support orders. At present, it is extremely cumbersome for either the custodial or the noncustodial parent to obtain modification of an existing order. Some easier means of access to the courts, perhaps through something analogous to small claims courts, is needed.

### Collection and Enforcement

As was noted earlier, collection of support for AFDC recipient has resulted in considerable savings to the taxpayers over the last decade.

Hawaii has the basic legislation in place to permit automatic wage assignment after a 1-month delinquency. The implementation of this law, however, is limited by the lack of automation of the court cashier's office. Under the present manual system, it is not possible to identify non-AFDC delinquencies for approximately 6 months. Obviously, automatic wage assignment cannot work under such conditions.

## INTERSTATE ENFORCEMENT

Despite the statutory framework of the Uniform Reciprocal Enforcement of Support Act (URESA), enforcement of child support orders from other States suffers from delays, backlogs, and difficulties in obtaining information because of lack of uniformity in documents.

Establishment of paternity has proved difficult in interstate cases. One of the chief problems in this area is the reluctance of responding jurisdictions to incur the substantial cost of blood tests.

The commission report also cites the tendency for judges in the responding jurisdiction to reduce the amount of support ordered by a judge in the initiating State.

Finally, although lack of visitation is not a defense for failure to support, the commission believes that the system should not ignore the difficulties faced by noncustodial parents in a distant State such as Hawaii when they have been denied visitation rights but cannot afford to hire an out-of-State attorney to enforce those rights.

## RECOMMENDATIONS

With one exception -- the organizational placement of the child support enforcement agency -- members unanimously supported the commission's recommendations for strengthening the overall child support program. The commission's recommendations are highlighted here.

### Administrative and Judicial Organization

With three members dissenting, the commission recommends that the IV-D agency be removed from DSSH and established as a division of the judiciary. There are two provisions to this recommendation. The first is that a unified child support enforcement agency be placed in judiciary administration, not family court, to preclude any perception of conflict of interest. The second provision is that all moneys retained by the State from child support collections (excluding incentive payments) be used to offset State contributions to the AFDC program.

## Child Support

To increase financial support for children born out of wedlock, the commission recommends that the health department forward copies of all birth certificates on which no father's name is stated to the IV-D agency within 90 days of the child's birth. The IV-D agency could then notify the mother that paternity establishment services are available.

The commission recommends that uniform support guidelines be established by judicial action rather than by statute. Judges should be mandated by statute to use the guidelines in all but exceptional circumstances.

The commission's report contains no specific formula for determining support amounts, but it does recommend a general approach -- the guidelines should be based on apportionment of the reasonable expenses of raising a child in proportion to the relative financial resources (including earning capacity as well as actual income) of both parents. Despite the complexity of the considerations, the guidelines must be simple.

All support orders should include responsibility for medical insurance when such insurance is reasonably available.

To improve enforcement capabilities, the commission recommends immediate automation of the court cashier's office. The commission also recommends a number of measures to strengthen enforcement, including placing the Social Security numbers of both parents on all support orders.

## Visitation

The commission recommends that court decrees be more specific about visitation and that support enforcement and visitation enforcement be consistently treated as separate, independent issues. The report suggests that, at its October 1985 meeting, the Hawaii Congress on Family Law address a number of visitation issues, including the advisability of promulgating visitation guidelines. In addition, the National Conference of State Legislatures should be asked to propose uniform legislation and procedures to facilitate access to courts and resolution of interstate visitation disputes.

## Interstate Enforcement

The commission recommends that nationwide standard URESA informational forms be developed. In addition, U.S. Department of Health and Human Services regulations should specify time standards to be met in responding to interstate inquiries, similar to the regulations requiring expedited process for court orders.

URESA complaints requesting collection of arrearages should be accompanied by a certified or notarized calculation showing the payments due pursuant to court order and a month-by-month schedule of payments made. This would make it easier for the responding jurisidiction to determine whether the arrearages in fact exist.

In interstate paternity cases, the initiating State should bear the cost of blood testing.

## Education

The commission recommends that education programs be developed for preadolescents, adolescents, and adults regarding the responsibilities involved in becoming a parent. The IV-D agency should be allowed to use incentive funds to prepare appropriate educational materials.

Family courts should develop educational brochures and programs for litigants in paternity suits. Finally, the IV-D agency should advertise its support- and visitation-enforcement services through public service announcements and brochures.

# Idaho

Shawn Anderson, Chairman

The Idaho Child Support Commission presented an interim report to Governor John V. Evans in the fall of 1985. The report provides the findings and recommendations developed by the commission, including recommendations for further study in specific areas. In many cases, the commission's recommendations embody proposed statutory language to bring the State into compliance with the requirements of the Child Support Enforcement Amendments of 1984 (Public Law 98-378).

## ADMINISTRATIVE AND JUDICIAL ORGANIZATION

The Bureau of Child Support Enforcement within the Department of Health and Welfare is the agency responsible for providing child support services.

The legal system is involved, to a great degree, in establishing paternity and enforcing court orders. As enforcement activity has increased, so has the number of court cases, creating backlogs and delays. The commission found that the number of agencies involved in support -- county prosecutors', county clerks', and sheriffs' offices; and the courts themselves -- contribute to these delays.

At present, Idaho does not comply with the time guidelines for the disposition of support cases that are set out in Public Law 98-378, nor does the State have an expedited process for handling such cases. The commission report points out that failure to have an expedited process and to comply with the established time frames will result in severe financial penalties for the State, as well as hardship for the children dependent on support payments.

## CHILD SUPPORT

### Amount of Support

At present, Idaho has no uniform guidelines for establishing support awards. Usually, the parties in a divorce negotiate the amount of support through their attorneys. While the agreement they reach is not binding upon the court, it is most often accepted.

### Collection

The Idaho Code requires that all payments for child support ordered by a court be paid to the clerk of the district court that entered the decree, unless the order contains other instructions. Most clerks of court, however, request that payments made under orders obtained by the Bureau of Child Support Enforcement be sent directly to the bureau. This procedure eliminates duplicate recordkeeping, but it also makes it impossible to comply with the Federal requirement that employers who withhold wages for support payments be permitted to combine all withheld amounts in one remittance.

An additional complication is the fact that many counties will not accept personal checks, even as payment from an employer under a wage-withholding order. The commission is concerned that refusal to accept personal checks makes it less convenient for obligated parents to pay, and may also make it less likely that they will pay.

The quality of records kept by the counties varies greatly. Most counties do not have an automated system, and most records reflect only a history of payments received and not the dollar amount of any delinquency.

### Enforcement

The primary enforcement remedy used by the Bureau of Child Support Enforcement is the attachment of the absent parent's liquid assets. Automation plays a significant role in wage withholding and in the interception of State and Federal tax refunds and unemployment compensation.

Prosecuting attorneys are also involved in enforcement of support orders, most often through contempt proceedings. When a parent becomes delinquent in support payments, the clerk of the court notifies the prosecuting attorney, who brings the parent into court to show cause why that parent should not be held in contempt. The judge generally orders the parent to begin making regular payments, including an additional sum to be applied to the delinquent amount.

These proceedings require service on the absent parent and court time. This often results in delays that could be avoided if some other form of enforcement, such as wage withholding, were used.

Although it is not routinely used by most prosecuting attorneys, recording child support orders to create liens against real property is an efficient, effective enforcement technique. The Bureau of Child Support routinely records child support orders when it is aware that the absent parent owns property, or has reason to believe that the absent parent may acquire property, in a given county. However, there is no statewide lien system, so to ensure that the absent parent's property is subject to a lien on any property owned in Idaho would require each child support order to be recorded in each of the State's 44 counties.

Federal law requires that the State have in effect procedures that require the absent parent to give security, post a bond, or give some other guarantee to secure payment of support. Existing Idaho statutes substantially meet this requirement. The commission, however, was unable to find a bonding company in Idaho willing to provide bond for delinquent obligors to guarantee child support payment. The commission feels that this remedy would rarely, if ever, be used.

### Availability of Services

Although the Bureau of Child Support Enforcement is authorized by statute to provide enforcement services to individuals who are not receiving Aid to Families with Dependent Children (AFDC) benefits, it has never been funded to do so. Until recently, the bureau provided only limited services to non-AFDC clients.

The local prosecuting attorney is the primary provider of enforcement services in non-AFDC cases. As noted above, the main enforcement remedy used is contempt proceedings -- a time-consuming and ineffective method. The problem is exacerbated by the typically low priority given child support enforcement cases.

## VISITATION

Although child support and visitation are legally independent issues, they are in reality inextricably intertwined. Children invariably become the victims of the power struggle between the parents over visitation and child support payments.

In the commission's public hearings, a common complaint was that noncustodial parents seeking visitation did not have standing or representation before the courts equivalent to that accorded the custodial parent seeking enforcement of a support award.

## INTERSTATE ENFORCEMENT

Interstate enforcement of child support obligations has traditionally been handled under the Idaho Uniform Reciprocal Enforcement of Support Act (URESA), which places primary responsibility for enforcement on the local prosecuting attorney.

Idaho's URESA statute, or at least its application, does not meet Federal requirements in several respects. For example, a number of prosecuting attorneys have taken the position that the custodial parent must have a child support order before the prosecutor will act under URESA, although Federal law requires both enforcement of existing orders and establishment of support orders.

Also, despite the Federal requirement that the State IV-D agency establish paternity in interstate cases, Idaho law permits but does not mandate the adjudication of paternity. Most prosecutors are now declining prosecution in contested paternity cases. The commission report notes a number of other shortcomings in the State URESA statute or in the handling of URESA cases.

## PATERNITY

In establishing paternity, the Bureau of Child Support Enforcement faces two major problems: the cost of establishing paternity and the statute of limitations on paternity proceedings.

The bureau's emphasis has understandably been to focus on cases that will produce payment of child support with the least cost. Compared to other nonsupport cases, cases requiring the establishment of paternity are significantly more costly and time-consuming. As a result, paternity cases have received less attention.

Idaho's statutes were amended in 1984 to permit paternity proceedings to be instituted until the child reaches the age of majority. The amendment, however, did not state legislative intent to make the provision retroactive. Thus, a dependent child over the age of 3 at the time the statute was amended may be precluded from having paternity established.

## RECOMMENDATIONS

### Administrative and Judicial Organization

The commission is still studying the issue of expedited process. After further study, the commission will make a recommendation in its final report to the Governor.

### Child Support

The commission recommends that uniform guidelines for support awards be established by court rule and that certain formulas used by other States be considered in developing Idaho's guidelines.

The commission recommends that State law be amended to bring Idaho into compliance with Federal requirements that certain enforcement remedies be available to all IV-D agency clients. Among those remedies discussed are:

- **Wage withholding.** The commission recommends specific statutory language and suggests that forms be available from court clerks so that individuals can institute wage withholding without an attorney's assistance. The availability of wage withholding and other remedies should be advertised to the public.
- **Liens.** The commission recommends that prosecuting attorneys be required to impose liens on real property in all cases where such action is appropriate. Further study with regard to the feasibility of a statewide lien is recommended.
- **Bonds.** The commission recommends that the State Department of Health and Welfare develop written guidelines that specify cases in which lien or bonding procedures would be inappropriate. For cases in which bonds or liens apply, the department should develop and follow a procedure that complies with the details of Federal law.

The commission also recommends that mandatory wage withholding and attachment of assets replace contempt proceedings as the primary remedy used in enforcing non-AFDC cases.

## Visitation

Although the commission is still studying the complex subject of visitation, members have reached consensus on the following recommendations:

1. State agencies and courts should consider the denial of visitation rights to be as serious as denial of child support.
2. Although support and visitation should remain separate legal issues, courts should have the discretion to consider modification or suspension of visitation or support rights as a remedy for refusing to follow a court-ordered decree.
3. Some specific minimum standard of visitation rights should be established in the State code, and all divorce decrees should specifically define visitation rights. The use of the vague, unenforceable term "reasonable" should be precluded.
4. Parents should inform each other of any change of address; custodial parents should be required to obtain permission from the court or the noncustodial parent before moving more than 300 miles from the jurisdiction of the court in which the divorce was granted.
5. The court should be permitted to modify child support awards in consideration of the distance a noncustodial parent must travel to exercise visitation rights.
6. All laws reflecting visitation rights should be embodied in one section of the Idaho Code.

## Interstate Enforcement

The commission recommends several changes to Idaho's URESA statute to bring it into compliance with Federal law:

1. The Bureau of Child Support Enforcement should be given responsibility for enforcing interstate IV-D cases, and payment in those cases should be made to the central IV-D agency.
2. The law should specify that the URESA remedy is available for spousal support and paternity cases and that reimbursement of public assistance funds may be accomplished through URESA.
3. The law should provide a simple method for transferring an order from one county to another for enforcement.

## Paternity

The commission recommends that the State appropriate general funds to increase the resources for establishing paternity. In addition, State law should be amended to make retroactive the provision that paternity proceedings may be instituted at any point before the child reaches the age of majority.

## Illinois

Because Illinois already has objective standards for establishing child support obligations, the Federal requirement to establish a State child support commission was waived. In lieu of a commission report, the Bureau of Child Support Enforcement within the Illinois Department of Public Aid submitted a summary of the State's recent child support initiatives.

Since mid-1977, the Illinois child support program has had a computerized management information system, the Family Support Information System. Following implementation of that system, little was done to commit State resources to expansion of the child support program until February 1983.

By that time, it had become apparent that nonpayment of child support is the single largest factor in the rising "feminization of poverty." A State legislative conference was conducted to address the problem of child support enforcement.

As a result of that conference and the commitment of the State's Public Aid Director, the child support enforcement program has assumed greater importance, and both collections and expenditures have grown. In State fiscal year 1985, expenditures were $22.4 million and collections were $58.7 million. In State fiscal year 1986, collections are expected to reach $95 million on anticipated expenditures of $30.9 million.

The program's expansion is a result of implementation of tough new laws related to parentage and income withholding, and work simplification. Among the initiatives undertaken in 1984 and 1985 are:

- establishment of the State's Office of Financial Recovery
- implementation of regulations on continuation of services to families whose public assistance has been canceled
- establishment of a child support enforcement trust fund
- inclusion in cooperative agreements of performance standards for State's attorneys and clerks of circuit court
- expansion of legal representation through contracts with private attorneys
- publicizing the availability of child support services to persons not on public assistance
- passage of legislation related to the offset of Federal income tax refunds for clients not on public assistance, revision of minimum support guidelines, parentage establishment, foster care cases, and expedited process
- approval of a grant proposal to improve interstate enforcement

Illinois has also established a Child Support Advisory Committee to oversee the implementation of these initiatives and to advise the Bureau of Child Support Enforcement on an ongoing basis.

# Indiana

Stephen Goldsmith, Chairman

Indiana's Governor's Commission on Child Support was created in response to the requirements of the Federal Child Support Amendments of 1984 (Public Law 98-378). To carry out its examination of the State's child support system, the commission, through its subcommittees, undertook two main fact-finding efforts: public hearings and surveys of people closely involved with the program, including child support commissions in other States. The Indiana commission submitted its final report to Governor Robert Orr on September 30, 1985.

## ADMINISTRATIVE AND JUDICIAL ORGANIZATION

### Administration

In 1976, Indiana established the Child Support Division, within the State Department of Public Welfare, to administer the child support enforcement program (Title IV-D of the Social Security Act). Through cooperative agreements, some of the Child Support Division's duties have been delegated to three agencies in each county: the county department of public welfare, the prosecuting attorney, and the clerk of the court.

In most counties, the department of public welfare is responsible for various functions related to families receiving Aid to Families with Dependent Children (AFDC), for taking all non-AFDC applications and fees, and for providing updated information to the State Child Support Division. In six counties, non-AFDC families apply directly to the prosecutor's office for IV-D services, rather than to the county welfare department.

The prosecutor's office is responsible for establishing and enforcing child support obligations through court as well as administrative actions. Information about court orders is transmitted from the prosecutor's office to the clerk and the State Child Support Division.

Each county clerk collects support money paid under court order and forwards the money to the State Child Support Division for all IV-D cases. Clerks are responsible for maintaining accurate records of payments, arrearages, and distributions.

### The Courts

The judicial system as it relates to child support matters has problems such as court backlogs and delays, a relatively high cost-per-case ratio, and an adversarial atmosphere, which exacerbates animosities between the parties. Recent studies have shown that if parents participate in custody, support, and visitation decisions, they are more apt to abide by the decisions and less likely to try to modify them later.

The commission surveyed States that use an administrative, rather than a judicial, process and found that the administrative process has certain advantages. For example, an administrative system frees the courts of time-consuming child support cases, eliminates adversarial situations, and is less costly.

## CHILD SUPPORT

### Amount of Support

The commission report notes that even if every dollar of child support ordered were paid regularly, the majority of those receiving support would still live below the poverty level. This problem might be alleviated if there were objective guidelines for establishing support orders, guidelines based on up-to-date studies.

Indiana currently lacks such standards. The State's Judicial Reform Committee has assumed responsibility for establishing the guidelines, which Federal law requires be in place by October 1, 1987.

### Enforcement

In April 1985, the Governor signed into law Senate Enrolled Act 26, which contained all the provisions mandated by Public Law 98-378.

Perhaps the key provision of the law is a requirement for a system under which court- or agency-ordered support payments are withheld from the wages or other income of delinquent obligors. Working together, the Child Support Division, the State Chamber of Commerce, and a task force of employers developed instructions, forms, and procedures to simplify income withholding. Marion County is conducting a pilot project in which employers can use electronic funds transfer to transmit withheld wages directly to a local bank, reducing paperwork considerably.

Employers can receive a small reimbursement to cover their costs. Employers who do not comply with a withholding order within a specific time limit are liable for any amounts they fail to withhold. For firing or discriminating against an employee who is subject to a withholding order, employers may be fined $100.

"Enforcement tools" of another nature -- publicity and education -- have been used by some local jurisdictions. These include billboards and public service announcements to make the public aware of the collection problem and its effect on taxpayers; training programs to help unemployed noncustodial parents find jobs; pamphlets to make teenage males aware of the responsibilities they will face if they become fathers; and declaration of "amnesty week" to bring delinquent parents in to work out payment agreements.

### Availability, Cost, and Effectiveness of Services

The State Child Support Division's cooperative agreements with the counties help ensure that the program can be more community oriented, more easily available, and more responsive to clients. The system is not without its flaws, however; in public testimony, some custodial parents complained of long waits and delays. Some streamlining of the process is needed.

The commission report notes that under the new legislation mandating equal services to AFDC and non-AFDC families, caseloads are certain to increase, and changes in staffing and procedures will be necessary. At the same time, incentive payments and increased collections should help pay for the necessary modifications.

In AFDC cases, Indiana currently collects $2.84 for every dollar of total program costs. Its non-AFDC collections amount to 44 cents for every dollar spent. With increased enforcement efforts, computerization, and higher enrollment of non-AFDC families, the counties and the State could receive enormous returns through incentive payments and decreased welfare costs.

During the fiscal year that ended June 30, 1985, the Indiana IV-D program collected $31.2 million in child support. Of this amount, $12.2 million was paid to custodial parents and $19 million was used to defray public assistance costs. Still, this $31.2 million barely scratches the surface; the balance of delinquent child support owed to custodial parents in Indiana as of June 30, 1985, was approximately $450 million.

The report points out that the support payments that go to custodial parents help keep those families off welfare, saving hundreds of thousands of dollars in AFDC, Medicaid, and food stamps. In addition, the payments are equivalent to wages; they will provide revenue in the form of State and county income taxes and sales tax. The higher the recovery rate, then, the greater the return.

## CHILD CUSTODY AND VISITATION

Several noncustodial fathers who testified at the commission hearings said that the system is biased against them, that fathers rarely get custody and are denied an opportunity to participate in many major decisions affecting their children. More frequent awards of joint legal custody might help remedy some of the problems.

Noncustodial parents (and grandparents) complained of problems with visitation rights. These parents, mostly fathers, believe that the State is denying them equal treatment by not providing access to the same legal services and recordkeeping services that are available to the custodial parent.

## INTERSTATE ENFORCEMENT

The commission found that in interstate cases, the problems normally associated with enforcing support orders are compounded by time, distance, and non-uniform procedures. Most cases are handled under the Uniform Reciprocal Enforcement of Support Act (URESA). Every State has a URESA statute, but that may be the extent of the uniformity. There are some guidelines to be followed in URESA cases, but there are no specific procedures or standardized forms in use nationwide. A similar difficulty exists in interstate income-withholding statutes.

It would be useful to have a uniform, nationwide computerized system to share child support case data and to assist in parent location. Collections and disbursements could also be performed electronically through the National Automated Clearing House Association (NACHA); this would greatly facilitate interstate income withholding. A pilot project using the NACHA network is to be conducted in Marion County.

## RECOMMENDATIONS

### Administrative and Judicial Organization

The commission recommends that State law provide for an administrative process for establishing and enforcing child support orders in IV-D cases. The Governor should refer the matter to the appropriate agency for study.

The State should develop a simplified IV-D application and assist the counties in establishing a streamlined application process for non-AFDC families. In addition, the State should require that all support obligations be paid through the clerk of the court. This would ensure accurate recording and monitoring of support payments and reduce disputes about nonpayment.

### Child Support

To decrease the length of time it takes to process an enforcement case, the State should provide funding for increased staffing in prosecutors' offices, the court system, and law enforcement agencies. The State Child Support Division should establish standards, including timeliness, for processing a case.

To assist in enforcement, the Child Support Division should obtain 90 percent Federal funding to design and implement a computerized, statewide case management and collection/disbursement system.

The commission recommends that the State assist employers as much as possible with the new income-withholding procedures. The legislature should enact stiffer penalties for violators of the income-withholding law.

The State should publicize sections of the law that spell out parents' rights and responsibilities for demanding/providing an accounting of child support expenditures.

The State Child Support Division should contract with a private agency to coordinate publicity, be responsible for special promotions, and assist with materials for training and other purposes.

## Child Custody and Visitation

Courts should consider more frequent awards of joint legal custody.

A study group should be established to investigate alternative means of legal assistance or representation for noncustodial parents.

The legislature should consider legislation that would provide a remedy, such as a criminal penalty, for a custodial parent's failure to abide by the terms of a visitation order.

To ease tensions for parents who have extreme visitation-related problems, State and/or county agencies should establish a network of "drop off/pick up" points.

The word "reasonable" as it is used in statutes dealing with visitation and support orders should be defined, in part by publicizing guidelines or criteria the courts use in setting support orders and visitation periods.

The State should adopt a "Noncustodial Parent's Bill of Rights" to be included in support orders, unless there is a compelling reason not to do so in a particular case.

## Interstate Enforcement

For interstate enforcement cases, the Federal Office of Child Support Enforcement should develop simple, standard forms for use in all jurisidictions and should require all jurisdictions to honor them. OCSE should also develop and publicize new, tougher URESA and income-withholding statutes and conduct training seminars for all appropriate personnel.

The IV-D program should create and use a nationwide computerized case management and collection/disbursement system.

## Iowa

Douglas Smalley, Chair

Iowa's seven-member Governor's Task Force on Child Support has met seven times since its members were appointed by Governor Terry E. Branstad. The task force's final report, submitted in September 1985, is composed largely of recommendations.

### CHILD SUPPORT

Child support orders in the State courts vary widely from county to county. Discrepancies and uncertainty encourage litigation and discourage some parents from paying support. There is no uniformity among clerks of court on the methods of payment nor on the length of processing time, nor does a uniform system exist for collecting and receiving support or for determining support delinquency.

A variety of enforcement mechanisms exist; however, the process appears time-consuming and overly complicated to laypersons.

### PATERNITY

There are often long delays before paternity is established, due to many mothers' inability to pay for paternity proceedings.

### RECOMMENDATIONS

In general, recommendations emphasize the importance of services to children, including counseling and legal representation. The need to extend these services to children not receiving public assistance as well as to those receiving assistance is noted. Another area of emphasis within the task force's recommendations is the development of uniform systems within child support enforcement activities.

#### Child Support

The State Supreme Court should adopt a uniform schedule of child support and review it periodically. Deviations from the schedule should be made only in circumstances related to such factors as additional property available to a parent, the tax effect of the dependency deduction, and the time children spend with noncustodial parents.

Recipients of child support should be accountable for the use of those payments for the benefit of the child.

A child support recovery system should be available to all persons receiving child support payments.

A nationwide system should specify procedures for recordkeeping and distribution of child support payments. Obligors should be able to pay by check, money order, credit card, automatic withdrawal, or any other convenient method.

Every court order imposing a support obligation should require the obligor and obligee to inform the clerk of court of their location. Willful failure to do so should be punishable as a misdemeanor.

Federal and State Government records should be made available to help locate obligors and enforce the payment of child support. Social Security numbers should be required on dissolutions. Further, both parties should be required to provide change-of-address information within 15 days of the move.

Current law on fraudulent transfer of property to evade support obligations should be reviewed, and financial statements of both parties should be exchanged upon request.

Courts should consider ordering incarceration in selected cases of nonpayment as well as in cases of visitation noncompliance.

Some enforcement tools should be simplified to help individuals process their own forms. An easy-to-read pamphlet should be available on the subject.

The legislature should consider funding a pilot program to examine the effectiveness of alternate dispute-resolution mechanisms.

## Child Custody

School-age children of divorcing parents should have counseling available to ease their adjustment. In cases of contested child custody, a home study should be completed by a professional to help the judge decide on physical custody.

## Visitation

Enforcement remedies for support payments should be considered to extend to visitation issues. Unwed parents should receive the custody and visitation provisions of existing State law.

## Interstate Enforcement

Temporary support orders should be permitted in cases brought under the Uniform Reciprocal Enforcement of Support Act. Each State should pass standardized legislation that requires acceptance by all jurisdictions of the original dissolution order.

## Paternity

A prompt paternity determination should be the goal in every out-of-wedlock birth, except in cases where the mother has a legitimate interest in not establishing paternity.

Temporary support orders should be permitted to avoid later collection problems.

# Kansas

Herbert Walton, Chairman

One month following their appointment, the members of the Kansas Governor's Commission on Child Support began working on legislation that had been introduced into the 1985 legislative session. Subcommittees focused on issues of wage withholding, expedited process, forms, guidelines, expedited procedures for visitation, and publicity. The commission's report, submitted October 1, 1985, is an interim summary of preliminary findings and recommendations.

## ADMINISTRATIVE AND JUDICIAL ORGANIZATION

The Kansas Department of Social and Rehabilitation Services (SRS) serves as the State's IV-D agency.

Judicial delay is not a major problem in Kansas, which has a median case average of 85 days for domestic relations cases.

A recently enacted bill, Senate Bill 51, along with Supreme Court Rule 172, brings the State into substantial compliance with Federal requirements of expedited process for enforcement of support. That bill authorizes district magistrate judges to establish, modify, and enforce support orders; establish and enforce orders in interstate cases; and enforce visitation orders.

Trustees in each district are authorized to help the obligee establish and enforce support payment. Trustees may also file motions for modifying support and may exercise such additional powers as issuing summonses and subpoenas, taking sworn testimony, and appointing special process servers.

## CHILD SUPPORT

### Amount of Support

Currently, a few judicial districts (primarily those in major metropolitan areas) follow a system of uniform child support guidelines. A subcommittee has been formed to propose a statewide system of fair, just, and equitable child support guidelines.

### Collection and Enforcement

With the passage of Senate Bill 51, all support orders issued after January 1, 1986, must include a conditional order for income withholding. Payments must be made through the clerk of court or the court trustee. Withholding is automatically triggered when arrearages equal 1 month's support or when any payment is 10 days overdue. Withholding procedures are available to private attorneys, obligees, and court trustees as well as to clients of SRS.

The IV-D agency is responsible for administering the withholding system.

Whenever there is an arrearage equal to 1 month's obligation, the Secretary of SRS may establish a lien upon the obligor's personal property.

## VISITATION

Senate Bill 51 requires an expedited process for visitation to be set up by the courts. A subcommittee is formulating recommendations on the topic.

## INTERSTATE ENFORCEMENT

Kansas enacted the model interstate income withholding act (proposed by the Office of Child Support Enforcement of the U.S. Department of Health and Human Services) with only a few additions. SRS is currently setting up a clearinghouse to expedite and screen incoming interstate cases.

## PATERNITY

Kansas law provides for a child to bring an action for paternity up until the age of majority. A mother's statutory action is limited to 1 year.

## RECOMMENDATIONS

### Administrative and Judicial Organization

The judiciary, rather than an administrative agency, should be the focus of efforts for expedited process. Continuing judicial education should center on the costs of raising children; the need for consistency in judicial approaches to custody, visitation, and support issues; and the needs of children and parents.

### Child Support

There should be greater consistency in judicial approaches to child custody, visitation, and support orders.

### Visitation

Preliminary recommendations of a subcommittee include establishing a process similar to small claims court to allow parents to bring proceedings on their own regarding visitation complaints. Complaints should be resolved within 21 days.

# Kentucky

William L. Graham, Chairman

Governor Martha Layne Collins established the Kentucky Commission on Child Support in January 1985. In an effort to identify problems with child support enforcement, the commission conducted seven public hearings across the State. At these hearings, the commission received testimony from several public interest groups, custodial and noncustodial parents, lawyers, judges, and others.

At the conclusion of the public hearings, the commission divided into four subcommittees to study specific topics: State and Federal legislation, issues related to child custody and visitation, interstate enforcement, and programs and administration. Each subcommittee produced findings and recommendations that were reviewed and accepted by the commission as a whole.

The commission presented its final report to Governor Collins in December 1985.

## ADMINISTRATIVE AND JUDICIAL ORGANIZATION

The Division of Child Support Enforcement of the Cabinet for Human Resources is the agency within the Kentucky State government responsible for administering Title IV-D of the Social Security Act. The State in turn contracts with local agents (county attorneys, commonwealth attorneys, private attorneys, and so on) to manage the program throughout the State. Approximately 30 counties lack such a contractual arrangement. Historically, enforcement in those counties has been the sole responsibility of a single attorney within the Cabinet for Human Resources.

The commission's subcommittee on programs and administration expresses grave concern about the degree to which local program administrators are shut out of the decisionmaking process and are more or less forced out of business. Although local staff members do much of the enforcement and collection work, the State has increasingly retained more of the Federal incentive payments and passed less through to localities. The proposed administrative process will exacerbate the problem. These funding reductions, along with lowered Federal financial participation in the future, are likely to result in poorer service to the State's children.

The subcommittee's report notes that at one point, 118 county attorneys participated in the child support enforcement program; at the time the report was issued, the number had dropped to near 90, and the trend appears likely to continue. The subcommittee feels that it is not good public policy to centralize responsibilities for child support enforcement exclusively within the State division.

The State's "decentralization" initiative calls for the establishment of 15 regional offices staffed by State employees. As part of their duties, these employees will administer the proposed administrative process. The subcommittee finds that, conceptually, the plan has merit, but that its operational design is flawed. Among the drawbacks the report notes are lack of cost effectiveness, overlapping responsibility, and duplication of effort.

The report also faults the State plan for automating the child support enforcement program, saying that most of the benefits accrue to the State, while most of the burdens fall on the local programs. Local programs cannot afford to wait 3 years or more for an automated system; they need some form of computerization now.

Because of its limited resources, the subcommittee chose not to review local program deficiencies, preferring to concentrate on the issue of program direction.

## CHILD SUPPORT

### Amount of Support

At present, Kentucky has no standardized guidelines for child support awards. An addendum to the commission's report discusses five support formulas but does not make a specific recommendation. The report notes that any formula should meet certain fundamental principles of equity and should be administratively workable and simple enough for all parties to understand.

### Enforcement

Although existing legislation has long established a duty to support children, the enforcement of that legislation has been ineffective. The subcommittee on programs and administration notes that a major problem is the reluctance of judges to enforce support orders; in addition, the quality of service varies from one jurisdiction to another, as not all local programs are equally effective.

The Kentucky legislature has adopted a number of regulations required by the Federal Child Support Enforcement Amendments of 1984. These measures include the extension of the services provided by the IV-D collection program to non-public assistance recipients, the imposition of liens against real and personal property of obligors, procedures for withholding State income tax refunds, and the establishment of an expedited, administrative process for the collection of child support.

## CHILD CUSTODY AND VISITATION

The commission's social issues subcommittee thoroughly examined five issues:

- o removal of child out of jurisdiction
- o visitation provisions of the Uniform Child Custody Juris-

diction Act and the Parental Kidnapping Prevention Act

- enforcement of visitation rights
- mediation and counseling services
- joint custody

Kentucky lacks a specific statute on the right of the custodial parent to move a child out of State against the wishes of, or without notice to, the noncustodial parent. There is little in case law on the issue, but existing case decisions allow the court to authorize a move provided the noncustodial parent has been notified and allowed to testify as to his or her opposition to the proposed move.

The subcommittee found a lack of knowledge, among both parents and lawyers, about the visitation enforcement methods included in the Uniform Child Custody Jurisdiction Act and the Parental Kidnapping Prevention Act. It is expensive to use these two acts, however, and the subcommittee also investigated other avenues for enforcing visitation.

The subcommittee report argues in favor of the use of mandatory mediation and counseling services in cases involving custody and visitation disputes, rather than the more common adversarial method.

As the subcommittee was considering joint custody as an alternative to sole custody, the Interim Joint Judiciary Civil Committee recommended the passage of a bill which would create a statutory presumption of joint custody in Kentucky. The social issues subcommittee concurs with that recommendation.

## INTERSTATE ENFORCEMENT

The commission's subcommittee on interstate enforcement notes that the increasing mobility of our society has resulted in a greater demand for interstate enforcement of child support orders -- an area that has long been difficult to deal with. The subcommittee's report traces a brief history of the Uniform Reciprocal Enforcement of Support Act (URESA), its predecessors, and its amended forms.

In spite of some four decades of legislation directed at interstate enforcement and the establishment of paternity, problems remain. Problems arise from the effectiveness (or lack thereof) of processing interstate cases. Most problems, the report says, come from the management of the system, the low priority assigned interstate cases, lack of commitment to their pursuit, and lack of cooperation with other jurisdictions on the part of both initiating and responding States.

## RECOMMENDATIONS

### Administrative and Judicial Organization

The State should develop an equitable funding formula with input from local contracting officials, to provide financial incentive and stability to local and State efforts and to enable them to operate efficiently and effectively. Similarly, the program planning process should enhance both State and local program initiatives.

The State should move quickly to implement an automated system for local programs.

## Child Support

In addition to measures already passed, the State legislature needs to pass further legislation to bring Kentucky into compliance with Federal law, including provisions to permit paternity to be established for child support purposes until the child is 18. Further, the wage assignment statute should be amended to permit wage withholding to go into effect when an arrearage equals 1 month's support; the statute should also provide for permissive wage withholding.

To help overcome the courts' reluctance to enforce support orders, the legislature should consider legislation that would include mandatory jail sentencing for failure to make timely and full child support payments.

To improve enforcement efforts, a system for evaluating the performance of local programs should be devised. Also, employees should be encouraged to use existing procedures which call for parents to lose their public assistance benefits if they do not cooperate in establishing a support order.

## Child Custody and Visitation

The State legislature should require the custodial parent to inform the noncustodial parent of any impending move and of the reason for the move.

Among the proposed remedies for interference with visitation rights suggested by the subcommittee on social issues are financial penalties on uncooperative parents, compensatory visitation, and possible modification of custody. The subcommittee also recommends that the court be authorized to assess enforcement costs, including attorney's fees, against the violating parent. The legislature should provide some scheme for funding visitation enforcement.

The legislature should also provide the legal framework and funding necessary for mandatory mediation and counseling services for all child custody and visitation disputes.

The commission recommends passage of proposed legislation that would make joint custody a legal presumption, to encourage both parents to share childrearing rights and responsibilities.

## Interstate Enforcement

Kentucky should establish a specific unit to handle interstate cases, and local programs should give URESA cases the same priority as other cases.

The legislature should allow for the use of lien-effective judgments to prevent the sale of property until a past-due support obligation has been satisfied.

Other methods endorsed by the URESA subcommittee include the establishment of a uniform, national system of wage withholding, the use of voluntary wage assignments in interstate cases, and wider use of criminal enforcement against delinquent obligors. In addition, the subcommittee recommends that the Kentucky Child Support Enforcement Office prepare a handbook on child support procedures to be sent to various State offices and agencies, to help avoid delays in processing.

## Louisiana

C. Allan Bradley, Jr., Chairman

Governor Edwin Edwards established the Louisiana Child Support Enforcement Commission on October 10, 1984. The 21-member commission was composed of subcommittees focusing on three areas: 1) expedited judicial procedures, visitation, guidelines; 2) enforcement procedures; and 3) paternity, public awareness, and issues related to support.

At monthly meetings, the commission heard testimony and presided over general comments and public input. The commission's final report was submitted in October 1985.

### ADMINISTRATIVE AND JUDICIAL ORGANIZATION

Currently, juvenile, criminal, and civil courts hear cases related to child support enforcement. There is a serious backlog in some jurisdictions.

A pilot program in one parish (Jefferson) employs two child support hearing officers to expedite matters.

The Title IV-D program is administered by the State Department of Health and Human Resources.

### CHILD SUPPORT

There is great disparity in child support awards among jurisdictions within the State. Amounts vary among the three levels of courts as well as among judges of the same jurisdiction.

#### Enforcement

Remedies for enforcing child support include revoking probation, which results in incarceration; using Internal Revenue Service intercepts for public assistance cases; and assigning liens.

Using the limited statistics available, the commission finds that wage assignment accounts for 12.6 percent of total collections, and the IRS offset accounts for 18.4 percent of total collections in public assistance cases.

### VISITATION

A connection appears to exist between noncompliance in child support payment and withholding of visitation privileges. Currently, the only legal remedy available for enforcing visitation is a rule for contempt of court.

## RECOMMENDATIONS

### Administrative and Judicial Organization

The commission recommends that the experimental use of hearing officers in child support cases should be continued, as well as encouraged in other parishes. Juvenile courts should expand their authority to include resolution of paternity and visitation issues related to support.

### Child Support

Further study should be devoted to determining the most desirable formula for support guidelines.

Existing civil orders for child support should not be decreased when enforced by criminal sanction. (At present there is a tendency, for the sake of expedience, to push to receive a lesser amount immediately rather than holding out for more money at a later date.)

Courts should increase penalties for civil contempt, including disobeying an order for paying child support, alimony, or visitation.

The Department of Health and Human Resources should release support payment histories to credit reporting agencies.

Vital-records confidentiality laws should be revised to permit access to locate absent parents.

### Paternity

Legislation should be passed to allow child support to be retroactive to the date a paternity suit is filed and to permit introduction of blood test reports into evidence.

### Interstate Enforcement

Louisiana's wage assignment procedures should be reciprocal with other States.

### Public Awareness

A media campaign should be undertaken to make the public aware of the child support enforcement program.

# Maryland

Charles H. Dorsey, Chairperson

Maryland's Child Support Enforcement Advisory Council was formed in August 1983 to study the legal, administrative, and fiscal relationships of the Maryland child support program and to make the public aware of the State's child support services and of the legal rights of parents. To carry out the first task, the council held monthly meetings at which Federal, State, and local experts testified. The council submitted an interim report on its findings to Governor Harry Hughes in August 1984. The final report, which was due on July 1, 1985, is not available.

## ADMINISTRATIVE AND JUDICIAL ORGANIZATION

### Administration

Maryland operates an approved State plan under Title IV-D of the Social Security Act. This plan is administered by the Child Support Enforcement Administration (CSEA) in cooperation with State's attorneys' offices, support collections divisions, domestic relations divisions, and other public agencies in the State. The functions of these agencies in supporting CSEA vary from county to county.

Services provided by CSEA and its support agencies include establishing paternity, establishing support obligations, locating absent parents, collecting support payments, enforcing support obligations, and cooperating in interstate enforcement.

The council found that local departments and agencies do not have adequate staff to handle their child support cases. As a result, the current volume of work (approximately 250,000 cases statewide) greatly exceeds the capacity of the system. Currently, the rate of established orders and of support payments that are actually made is 50 percent. These low rates are due to several administrative and judicial shortcomings. Administrative shortcomings include the lack of an automated dunning system and the heavy work volumes in local departments of social services.

### The Courts

There is a lack of judicial priority for child support cases. Under the current system, the courts set aside a specific number of days to hear domestic cases and are thus forced to crowd dozens of cases into a few hours. The result: judges often make hurried decisions on limited information.

## CHILD SUPPORT

### Amount of Support

There is no requirement for Maryland State's attorneys or the courts to employ a formula to determine child support obligations. Consequently, it appears that the amounts of support ordered by the courts are generally not enough to support several children, or even one child.

### Collection and Enforcement

Maryland ranks seventh in the Nation in combined public assistance and non-public assistance collections. One reason for this is that the State has programs to enable it to intercept State and Federal income tax refunds and unemployment insurance benefits in order to satisfy support obligations.

Nevertheless, the obligated parent in Maryland makes payments in only about one-half of the cases. The obligated parent has been able to avoid making these payments because heavy work volumes in local departments of social services and support collections agencies, combined with the lack of an automated dunning system, permit months to pass before the obligated parent is reminded to make payment. Actual contempt proceedings for nonpayment of support may take months or years.

Since Maryland does not have a self-starting collections mechanism, such as an automatic earnings withholding law, the enforcement process may take many months. In addition, there are few methods (besides incarceration, which is used very infrequently) to encourage the obligated parent to make payments.

## CHILD CUSTODY AND VISITATION

The council did not deal with the issues of child custody and visitation rights of noncustodial parents. The council does, however, plan to look at what effects visitation and custody have on child support payments and will address this issue in its final report.

## INTERSTATE ENFORCEMENT

The council notes that in spite of the Uniform Reciprocal Enforcement of Support Act (URESA), States do not cooperate to the fullest extent possible in enforcing other States' orders. This lack of cooperation contributes to delays or even total inability to secure support payments.

## PUBLICITY

Governor Hughes also gave the council the task of publicizing the availability of child support services. The council did this by designing an information pamphlet, by issuing press releases advising citizens of available services, and by having its members appear on numerous radio and television programs.

## RECOMMENDATIONS

Before making its final report, the council plans to gather more information about the population of parents who do not meet their support obligations in order to determine who these parents are, what effects visitation and custody have on payment, and what can be done to encourage parents to support their children. After gathering this information and after monitoring the impact of the Federal changes on the Maryland program, the council will recommend changes in legislation and in the State's judicial and administrative processes. These recommendations will be included in the council's final report.

## Massachusetts

Catherine M. Dunham, Chairperson

In October 1985, the Massachusetts Governor's Commission on Child Support presented its report to Governor Michael S. Dukakis. The report focuses on the major recommendations agreed upon by the total 32-member commission. These recommendations relate closely to the Federal requirements mandated by the 1984 Child Support Enforcement Amendments (Public Law 98-378). An additional volume will contain full reports on the work of the commission's committees, including recommendations not acted upon by the entire commission.

In order to attend to the implementation of its recommendations, the commission agreed to continue its work until January 1, 1986.

### ADMINISTRATIVE AND JUDICIAL ORGANIZATION

Massachusetts ranks seventh among the States in collecting child support and has the highest ratio of child support collections to AFDC costs. Even greater effectiveness could be achieved in a better coordinated system, however.

In its work, the commission identified several universally experienced difficulties:

- **Fragmentation.** Executive branch agencies, district and probate courts, and law enforcement agencies are all involved in child support matters, resulting in a complex system accountable to no single authority.
- **Lack of uniformity.** The administration of child support varies widely in various jurisidictions. Those who use the system are aware that persons in similar circumstances cannot count on receiving similar treatment.
- **Inadequate provision of services.** No client-oriented information is available to inform citizens about the system and how to use it. All agencies with child support functions have other duties with greater claims on their resources.
- **Inadequate use of available enforcement tools.** Two examples of this inadequate use are the underutilization of wage assignment and the inadmissibility of blood tests in determining paternity.

### CHILD SUPPORT

#### Amount of Support

Massachusetts currently has no uniform guidelines for setting support awards. The commission's guidelines committee conducted extensive research into the matter, and the commission adopted a set of principles developed by the committee.

These principles state, among other things, that both parents share the responsibility for child support and that to the extent either parent enjoys a higher-than-subsistence standard of living, the child should share the benefits. Even low-income parents should be required to make at least a token support payment; this payment serves to establish a psychological bond between absent parent and child and also enables the enforcement agency to maintain contact with the obligor, so that as income increases, support amounts can be raised.

The scope of the support obligation should be predictable, so that both parents can take support into account when making other decisions (such as remarriage). The guidelines should be easy to understand and to administer and should be applicable to most cases.

### Collection and Enforcement

Massachusetts already uses some of the enforcement techniques mandated by Public Law 98-378. These include placing liens on delinquent obligors' property and requiring them to post security to help guarantee support payments. The State also meets the Federal requirement that support orders include medical insurance whenever possible.

Federal law does call for some changes in Massachusetts' operations, however. Although the State already has a statute permitting income assignment, the statute must be strengthened. In addition, State law must be changed to make State and Federal income tax refund interception available to families not receiving public assistance.

## RECOMMENDATIONS

The commission's recommendations are intended to result in an efficient, adequate, and fair child support system. Those recommendations that require legislative action are embodied in proposed legislation that was being considered in committee when the commission's report was issued.

### Administrative and Judicial Organization

The commission recommends that collection services and enforcement functions be centralized in a strong IV-D agency that would be sensitive to the needs of its clients. Equal services should be available to families receiving public assistance and to those not receiving such assistance.

All support orders should be set in civil proceedings in probate and district courts, reserving criminal prosecution for punishment to the district court.

To comply with the Federal requirement for expedited process, the commission recommends the creation of a master system. Under the proposed system, when a person comes to court to obtain or enforce support, the case will be handled by a master, who must be a lawyer. All of the master's decisions would be reviewed by a judge and might be altered if the judge does not approve the decision. If one of the parties appeals the master's decision, a judge hears all of the evidence and arguments again (rather than reviewing the record) and may change the decision, after stating in writing the reasons for the change.

**Child Support**

Support guidelines are to be promulgated by a committee chaired by the chief administrative justice of the trial court. The committee's decision will include consideration of socioeconomic factors as well as legal ones. Guidelines should be in place at the time the master system is implemented.

The commission recommends that income assignment be ordered automatically in every case unless the court or master determines for good cause that it should be suspended. When immediate assignment is not ordered, assignment is triggered when two weekly or one monthly payment is missed.

The commission also recommends that, to comply with Federal law, the State should notify credit reporting agencies when any obligor accrues a child support arrearage of $1,000 or more. Also, the IV-D agency should intercept State and Federal income tax refunds for persons not receiving public assistance.

**Establishment of Paternity**

Paternity proceedings should be changed to civil proceedings to allow for faster processing and a civil standard of proof. Blood and genetic tests should be allowed as evidence. Paternity proceedings should be within the jurisdiction of both the probate and district courts.

# Michigan

Constance Tarran, Co-Chair
Sharon Wills, Co-Chair

The Michigan Women's Commission Task Force on the Friend of the Court prepared its final report, entitled "In the Best Interests of the Child: A Study of the Friend of the Court," in 1979. Although the report antedates by several years the passage of the 1984 Child Support Enforcement Amendments, it does examine many of the issues Congress requested State commissions to consider.

In preparing its report, the task force sent questionnaires to Michigan's 69 Friends of the Court; 53 were returned. The task force also held six public hearings throughout the State.

Since the 1979 report was issued, important changes have been made in Michigan. These changes are highlighted in the final section of this summary.

## ADMINISTRATIVE AND JUDICIAL ORGANIZATION

Michigan's Friend of the Court system was created by law in 1919 (P.A. 1919, No. 412). In each judicial circuit, the governor appoints a person to serve as Friend of the Court upon the recommendation of the circuit court.

The powers and duties of the Friend of the Court are spelled out in State law and in Michigan General Court Rules promulgated by the State supreme court. However, there is no centralized administrative agency to oversee the operations of the Friends of the Court statewide; rather, the Friends of the Court are under local control of the judges of each circuit court and, to a lesser extent, of the county boards of commissioners, who are responsible for funding the office of the Friend of the Court in their jurisdiction. This local control results in varying procedures, funding levels, and differences in emphasis from office to office.

### Functions of the Friend of the Court

The Friend of the Court works as an advocate for minor children in all divorce, paternity, and separate-maintenance or "family support" cases. In exercising its advocacy role, the Friend of the Court investigates these cases and submits recommendations to the court about such issues as custody, visitation, amount of child support, and amount of alimony. Although these recommendations are not binding on the judge, a 1978 Court Watch Project in Wayne County found that the judge followed the recommendation of the Friend of the Court about two-thirds of the time.

After a divorce is made final, the Friend of the Court enforces court orders for custody, child support, and visitation. All court-ordered child support payments -- not just those to families receiving AFDC assistance -- are channeled through the office of the Friend of the Court.

As the party responsible for "general supervision" of the children in divorce cases, the Friend of the Court can also seek modification of existing court orders and, if necessary, can assume legal custody of children and place them with either parent or in foster homes without further court orders.

### Problems

Although Michigan's Friend of the Court system is recognized as one of the most effective means of enforcing domestic-relations orders, it is not without its problems. Local control results in varying procedures, funding levels, and differences in emphasis from office to office.

Witnesses at public hearings reported that staff members were sometimes insensitive to the parents' plight. In addition, they said the Friends of the Court were not readily accessible; some offices refused to take telephone calls, and in many cases the offices were open only at inconvenient hours.

## CHILD SUPPORT

### Amount of Support

In 1979, when the report was prepared, the State had not adopted a uniform schedule for child support payments. After investigation, the Friend of the Court could recommend an amount to the circuit court judge, who then issued the order. Some parents, both custodial and noncustodial, questioned the validity of the way the amount of support was set.

Support payments are, by law, supposed to be reviewed every two years in cases where minors are supported partially or wholly by public welfare. In many cases, the Friend of the Court is unable to comply with this requirement because of inadequate staffing.

### Collection

All court-ordered child support payments flow through the office of the Friend of the Court, which records the payments and issues a support check to the proper recipient. In AFDC cases, the payment goes to the State to defray welfare costs.

### Enforcement

The Michigan General Court Rules of 1963 set out a procedure to be followed when a parent becomes delinquent in paying child support:

1. The Friend of the Court sends a letter by ordinary mail to the delinquent parent demanding payment.
2. If the noncustodial parent does not respond after 10 days, the Friend of the Court may petition the court for a show-cause order. If the order is issued, it is sent by ordinary mail to the delinquent parent.
3. If the delinquent parent does not respond within 4 days, the court may issue an order for arrest, in order to bring the parent in for a show-cause hearing.

The vigor with which enforcement actions are carried out varies from circuit to circuit. In some jurisdictions, delinquency notices are issued automatically when payments fall behind schedule; in other areas, unless the custodial parent complains, no notice is issued. Only the first step in the enforcement process is mandatory; steps 2 and 3 are optional.

Where all three steps are followed as a matter of policy, overall child support collections range from 80 to over 90 percent. According to the 1979 study, the State average is 65 percent; some counties' collections are as low as 45 percent.

Other factors that affect collection rates include the availability of officers to serve arrest warrants and the measures taken by the court against those found guilty of contempt for nonpayment.

## CHILD CUSTODY

A 1970 State law (P.A. 1970, No. 91) established 10 factors to be considered in deciding custody. The process is intended to determine the better parent to be awarded child custody, not to determine which parent is unfit.

It is the duty of the Friend of the Court to carry out the investigation and make a recommendation to the court. The chief complaints noted in the commission report were possible bias on the part of the investigator and the length of time taken to carry out the investigation.

## VISITATION

The Michigan task force concluded that it is in the best interests of the child to continue a relationship with the noncustodial parent through visitation rights. In theory, the courts view child support orders and visitation orders as independent and to be enforced separately. In practice, the two are not always treated independently. Some noncustodial parents reported that they received no assistance in exercising their visitation rights if they were in arrears on support payments.

Violations of visitation agreements appear to be less aggressively pursued than violations of support orders. And violations of visitation agreements cut both ways. Sometimes it is the custodial parent who refuses to allow the other parent to see the child; at other times, the noncustodial parent fails to appear. Visitation agreements place obligations on both parties, and violation by either party should be punishable.

## RECOMMENDATIONS

The task force made numerous recommendations in a number of areas. Only the most pertinent are included here.

### Administrative and Judicial Organization

Because many of the problems with the Friend of the Court system arise from lack of uniformity of procedures, the commission report recommends the creation of a State Administrative Office to oversee the Friends of the Court. The functions of this office should include the provision of human services training to Friends of the Court and their staffs, development of a client handbook, establishment of more uniform operating procedures, and development of a uniform schedule of child support.

### Child Support

As was noted earlier, the task force recommends a uniform schedule of child support. All Friends of the Court should recommend the amount of support to be awarded in each case and should provide justification for their recommendations. There should be no minimum income standard below which there is no responsibility for support.

The enforcement process should be triggered automatically whenever support payments are in arrears. The standard suggested for triggering the enforcement process is the absence of any support payment within six weeks or less than 75 percent of the court-ordered payment within a six-week period.

All orders for child support should include a "sleeper" for wage assignment. Wage assignment would go into effect when support is in arrears, as defined previously, if the delinquent parent fails to show cause.

Friends of the Court should receive adequate funding to carry out mandated reviews of child support amounts. Parents should be informed of any recommended modification.

### Child Custody

The task force recommends that Friends of the Court receive better training in the determination of custody. Custody recommendations should be accompanied by a justification.

The Friend of the Court should see that parents are aware of the progress of the investigation, should explain to them the basics of the Child Custody Act, and should provide referrals to counseling when appropriate.

### Visitation

Visitation rights should be uniformly enforced; jailing should be a penalty for noncompliance by either party.

The task force recommends a statutory change to permit the custodial parent to petition for a modification of visitation rights when the noncustodial parent is delinquent in exercising his or her current rights.

## Changes to Michigan's Child Support Program Since the 1979 Commission

Since the publication of the report by the Michigan Women's Commission Task Force, many of the recommendations regarding child support were enacted into law by the Friend of the Court Act and the Support and Visitation Enforcement Act, both enacted in 1982.

The recommendations for organizational change were reflected in the creation of a Friend of the Court Bureau within the State Court Administration office. This bureau is responsible for assuring greater consistency among Friends of the Court statewide through operational guidelines, educational efforts, and training. The bureau has also been actively developing guidelines for the establishment of obligations with the advice of a broadly based advisory group.

The commission's recommendations for the improvement of support enforcement have been met by the establishment of orders for income withholding in all support orders and requirements for initiation of enforcement upon a delinquency equal to the amount of 4 weeks' obligation.

Concerns for improvement of visitation have been addressed by authorizing a makeup visitation policy to be administered by the Friends of the Court as an alternative to incarceration.

Although further refinement in statutes is always possible, the work of the Michigan Women's Commission Task Force has led to significant statutory improvements in the major areas addressed. Current legislative efforts continue to address areas of concern and to draw upon that work.

# Minnesota

Mary Louise Klas, Chair

In September 1984, Governor Rudy Perpich appointed 26 persons to the Minnesota Non-Tax Revenue Commission (MNTReC) and charged them with reviewing nontax revenues and making recommendations to improve those revenues. In accordance with Public Law 98-378, the Child Support Enforcement Amendments of 1984, MNTReC was designated the State's child support commission, and a task force was assigned to study child support enforcement.

The task force concluded that it would be impossible to complete a thorough evaluation by October 1, 1985, and received permission from MNTReC to extend its term through December 1986. The report summarized here contains preliminary findings, general recommendations for change, and recommendations for further study. The task force will issue a full report by January 1, 1987.

## ADMINISTRATIVE AND JUDICIAL ORGANIZATION

As mandated by Federal law, Minnesota has designated a single and separate organizational unit to administer its Title IV-D program. This State agency is the Office of Child Support Enforcement, located within the Minnesota Department of Human Services. Its focus is on fiscal analysis, evaluation of county support enforcement programs, operation of the State parent locator service, and policy development and implementation.

Individual counties are responsible for administration of daily IV-D operations. In 86 counties the department of economic assistance administers the IV-D program. In the 87th county, the program is administered through the county attorney's office. All county IV-D offices have negotiated a cooperative agreement with their local county attorney for the provision of legal services.

Minnesota has received funding from the U.S. Department of Health and Human Services to establish a statewide automated clearinghouse system for child support enforcement. The clearinghouse will establish a master file for child support case handling, recordkeeping, and management. The second of three phases of the project will be completed by the end of 1985.

The State has enacted numerous remedies in recent years that allow for cost-effective, administrative enforcement of child support. Because much of the discretion in the law has been eliminated, adjudication is generally reserved for egregious or complex matters. The report notes that this increases the need for a well-trained, specialized family law judiciary and for appropriately educated attorneys.

## Public Assistance Reimbursements

An applicant for, or a recipient of, public assistance or foster care is considered to have assigned all rights to child support and maintenance to the public agency. The county agency may bring a legal action against the noncustodial parent to recover the amount of assistance furnished that the parent has had the ability to pay in the 2 years immediately preceding the commencement of the action. The county agency may bring such a suit even though a court order for support already exists, and even though the obligated parent is current under that order.

## Amount of Support

Both IV-D agencies and the courts must use State guidelines in setting child support amounts, for public assistance and non-public assistance cases. The award is determined by multiplying the obligor's net income by the percentage indicated in a guideline table. The percentage increases with the number of children and as the obligor's net income increases. The guidelines are binding unless the court makes express findings of fact to justify a smaller award. If the parties agree, or if the court makes specific findings, the award may be greater than the guideline amount.

Since the guidelines were enacted in 1983, they have generally been accepted by the judiciary and have resulted in an overall increase in average child support awards. The guidelines, however, give no direction to the courts in their application to nontraditional custody situations.

Further, there is a perception by child support obligors that Minnesota's guidelines are unfair in that they do not specifically factor the custodial parent's income into the calculation and they are not based on any objective standard of the cost of raising a child.

## Modification of Support Orders

Except in unusual cases, all orders for child support must provide for a biennial adjustment in the amount to be paid, based on the change in the cost of living. The adjustment is made automatically on May 1 every other year, after providing notice to the obligor and affording the obligor an opportunity to request a hearing.

This automatic adjustment allows child support orders to keep pace with inflation. When either parent's circumstances change substantially, however, it is necessary to motion the court for a modification. Forms for this purpose are available from the clerk of court. Modifications are made in accordance with child support guidelines.

## Collection and Enforcement

The task force report notes that there are many sanctions for failure to pay child support, but few incentives to pay. One of the most effective sanctions is income withholding. It is difficult, however, for the IV-D agency to maintain current employment information, and not all employers are knowledgeable about the withholding laws and their related constraints.

State and Federal income tax intercepts also are used to collect child support from delinquent parents.

Another type of enforcement tool is the judgment, which can be obtained either administratively or through motion and court order. Once a judgment is docketed, a lien attaches to all the judgment debtor's real property in the county of docket.

Civil contempt proceedings are used to secure compliance with a reasonable order. Incarceration may be ordered when it is reasonably likely to produce compliance, the report notes. It is also possible to prosecute delinquent parents for criminal nonsupport.

For every dollar spent in fiscal year 1985 for child support enforcement in Minnesota, $2.95 was collected. Child support collection activity returned 9.5 percent of AFDC grant expenditures to the State for the same period of time.

The non-public assistance caseload has doubled in the past 5 years and currently represents 24 percent of the total IV-D caseload. Increased publicity of the availability of child support enforcement services to non-public assistance cases is likely to increase this percentage, although there are no data available to permit an estimate of the increase.

Clients who are not recipients of public assistance must pay a $5 application fee, effective August 1, 1985. Although it is too early to judge the impact of the new law on clients and administrative costs, most counties feel that a similar fee required earlier was not cost-effective to administer.

## CHILD CUSTODY AND VISITATION

An award of joint custody is made at the court's discretion and may reduce the amount of child support awarded. Each parent may be ordered to pay the other parent during that parent's custodial period.

Visitation and custody are not unrelated. An unwarranted denial of visitation may constitute contempt of court and may be sufficient in and of itself for a reversal of the custody award. Generally, however, existing remedies for visitation violations are ineffective.

In law, visitation and support are separate issues. Nonetheless, the two are inextricably intertwined for the parties. The task force asks for study on whether, and under what circumstances, support and visitation may be made legally dependent on one another.

The court may suspend child support payments during an extended period of visitation or reduce support below guideline levels when necessary to allow for the cost of visitation.

## INTERJURISDICTIONAL ENFORCEMENT

Minnesota adopted the Revised Uniform Reciprocal Enforcement of Support Act (RURESA) in 1982. When Minnesota is requested, as the responding jurisdiction, to establish a support obligation, the Minnesota child support guidelines are used to calculate the amount. When an existing out-of-State order is registered in Minnesota, the arrears are also registered. The Minnesota court can modify those arrears, to the extent that modification is permissible in the initiating jurisdiction.

In Minnesota, RURESA also applies to intrastate cases when the parties live in different counties. The task force suggests that the need for this arrangement be studied.

## PATERNITY

The State adopted a modified version of the Uniform Parentage Act in 1980. Under Minnesota law, the alleged father has the right to court-appointed counsel if indigent, the right to blood testing, and the right to a jury trial.

If blood test results indicate a likelihood of paternity greater than 92 percent, the court must order temporary support pending trial. Once paternity is adjudicated, the father's visitation and custody rights are determined.

Because they are less likely to result in immediate collections, paternity cases may receive a lower priority within the IV-D agency.

## RECOMMENDATIONS

### Administrative and Judicial Organization

The task force recommends creating a grievance system for resolving disputes between IV-D agencies and clients or persons denied service. The task force offers a number of recommendations for clarifying the relationship between the IV-D agency and its clients, including the identification of potential conflicts of interest.

### Child Support

Courts should be required to include a child support order in domestic-abuse actions.

The effects of remarriage of either party on support obligations should be clarified.

The task force recommends that the validity of specific objections to Minnesota's support guidelines be evaluated. Recent research on the cost of raising children should be examined to see if a revision of the State's guidelines is warranted.

The task force offers a number of recommendations for strengthening enforcement mechanisms, particularly through centralization. The task force recommends that a central judgment docket be established that would create a lien on all the delinquent parent's real property in the State. The group further recommends studying the benefits of having all support paid through a central State registry and of having child support judgments handled through a central judgment-recovery office.

## Child Custody and Visitation

Courts should be forbidden to consider financial ability to provide for children when determining child custody. Further, custody statutes should be amended to preclude a noncustodial parent from raising custody and visitation issues in the context of an action to establish, modify, or enforce child support, except in paternity adjudication proceedings.

The task force recommends that whenever a violation of a visitation order is alleged, at the request of either party, the parties should be required to meet with court services at least once in an effort to resolve the problem.

The relationship between length of visitation and the amount of child support should be made more specific. Also, minimum standards for "reasonable visitation" should be spelled out, and there should be financial consequences for departure by either parent from a "reasonable" visitation schedule.

## Interjurisdictional Enforcement

The State should adopt a uniform URESA petition for all counties to use and should propose a similar petition form for nationwide use. The task force also recommends a study of interjurisdictional enforcement in order to determine whether it can be simplified and results enhanced.

## Paternity

The task force recommends the creation of financial incentives for IV-D agencies to establish paternity.

Hospitals should be penalized for failing to comply with reporting requirements in the case of out-of-wedlock births to minor mothers. Hospitals should be required to inform all unmarried mothers of the availability of IV-D support and paternity services and should also inform them of the short- and long-term consequences of failing to establish paternity.

# Mississippi

Beverly W. Hogan, Chairman

Mississippi's State Commission on Child Support first met in December 1984. Its final report, sent to Governor Bill Allain on October 1, 1985, is composed largely of recommendations.

## CHILD SUPPORT

There are no statewide standards for uniform child support orders. The commission states that Mississippi has been forced to support thousands of children whose parents are capable of supporting them. On the other hand, when support is ordered, the amount is frequently inadequate for meeting the child's minimum basic needs. Fifty-nine percent of children eligible for child support do not receive it. The average amount awarded per child is $76 a month.

## RECOMMENDATIONS

### Child Support

The commission examined three basic sources: Wisconsin's percentage of gross income standard, Delaware's Melson formula, and Eden's Estimating Child and Spousal Support. The commission recommends the formula based on Wisconsin's approach with apportionment of uncovered medical costs according to the parties' ability to pay.

Modifications to Wisconsin's system include requiring obligors to submit Federal tax returns annually to determine the need for change and providing 30 days' notice for proposed changes.

The child support figure should reflect a fixed monthly amount, and wage withholding should be part of each decree.

The commission recommends that these standards be evaluated in terms of implementation and uniform use by October 1, 1987.

### Child Custody

Chancery court judges should award joint custody whenever such an award is in the best interest of the child.

### Visitation

Chancery court judges should order and enforce reasonable visitation as appropriate.

### Legislation

Mississippi State law should be amended to comply with Public Law 98-378 (Child Support Enforcement Amendments of 1984) in the areas of mandatory wage withholding, expedited process, and State income tax refund offset.

Further, changes in the State paternity statute should be made, according to 10 fundamental components of the commission's ideal paternity statute. Amendments should reverse the present exclusion of paternity tests from court consideration except upon demand of the defendants.

## Extended Life of the Commission

It is the consensus of commission members that the commission should be reconsituted legislatively as an independent advisory body with expanded responsibilities. These responsibilities should include monitoring and follow-up on the status of the recommended uniform child support standards and other related oversight activities.

# Missouri

Ray Simonton, Chairperson

In compliance with Public Law 98-378, the Child Support Enforcement Amendments of 1984, the Missouri Child Support Commission submitted its report to Governor John Ashcroft on October 1, 1985. The report contains a description of current child support programs in the State and recommendations and proposed legislation to bring the State's program into compliance with Federal requirements. To gather information for its report, the commission held five public hearings throughout the State and also solicited written testimony.

Many of the recommendations made by the commission were incorporated into a legislative package. This legislation failed to pass the legislature in last year's session.

## ADMINISTRATIVE AND JUDICIAL ORGANIZATION

### Administration

Missouri's Child Support Enforcement (CSE) Unit operates 20 offices. Ten are administered by the State, nine by the county in which they are located, and one is administered by the State and the county -- that is, the office is staffed with State employees who work a case up to a certain point and then deliver it to the county prosecutor's office for legal action.

Until recently, child support orders were set by the courts, but in August 1982, a new procedure went into effect that allows support orders to be established administratively rather than judicially. If a judicial support order does not exist, a petition-for-support notice can now be served on the noncustodial parent. This administrative order is filed by the circuit court and has the same force and effect as a judicial order.

Missouri's CSE Unit has used an automated data processing system since July 1977, but the system has always been problem-ridden. The CSE Unit is now conducting a study of the system's performance to identify and correct problems and to develop or enhance new system capabilities. Solutions being considered include a substantial redesign of the case maintenance, accounts receivable, distribution, Federal reporting, document printing, and billing modules.

### The Courts

Until the administrative procedure mentioned earlier was instituted, all orders for support (except temporary ones) were established exclusively through the courts. Because most judicial orders for support are results of divorce actions, the majority of these orders come to the IV-D agency already in the form of a dissolution decree.

## CHILD SUPPORT

### Amount of Support

In Missouri, most judges use their own discretion to determine the amount of support, although the Missouri bar association has provided some voluntary guidelines for establishing support obligations. The commission recognizes that new guidelines are needed to ensure more equitable and uniform support awards.

### Collection and Enforcement

As was noted earlier, a support order can be established either through the courts or by the CSE Unit. Recent legislation has established many mechanisms for enforcing payment both for families receiving Aid to Families with Dependent Children (AFDC) payments and for those not receiving such payments. Support mechanisms include:

- **Income assignment.** Income assignment is activated when an obligated parent refuses to pay support. The clerk of circuit court can then initiate a mandatory income assignment to the obligated parent's employer, who then deducts a specified amount from the parent's wages. Most Missouri judicial circuits incorporate mandatory income assignment provisions into orders for child support. There are some judicial circuits, however, which do not.
- **Garnishment/sequestration.** When an absent parent refuses to execute a voluntary income assignment even though the court order has such a provision, the investigator can initiate a garnishment of up to 50 to 60 percent of the obligated parent's wages. This garnishment can run up to 90 days.
- **Order to withhold.** This is an administrative order rather than a judicial one. Through such an order, periodic deductions are taken from the absent parent's wages.
- **Attachment.** Attachment is used only when wages cannot be identified. The procedure allows an investigator to initiate seizure of real and personal property owned by the absent parent.
- **Property liens.** In this procedure, rather than an obligated parent's property being seized, a lien is placed against it.
- **Withholding of unemployment compensation.** If the obligated parent is receiving unemployment compensation, 25 percent of the weekly benefit may be withheld to meet the child support obligation.

- **Tax refund intercept programs.** Both the State Income Tax Office and the Internal Revenue Service will intercept a tax refund on behalf of the IV-D program.
- **Credit clouding.** This process is used when other procedures fail. The obligated parent is informed that if support payments are not made, the credit bureau will be notified that the obligor is a bad credit risk. This information will be expunged from the parent's record if support payments resume.

The commission found that when all of these enforcement measures fail, the threat of being incarcerated is effective in persuading an obligated parent to meet the support obligation.

Missouri also has two special collection units. One specializes in the collection of child support in foster care cases, and the other establishes and enforces court orders on behalf of other States.

## CHILD CUSTODY AND VISITATION

The commission did not deal with the present status of child custody and visitation practices except to note that at present it is left to the courts to decide whether or not the payment of child support is linked with visitation rights.

## INTERSTATE ENFORCEMENT

On October 1, 1985, an interstate unit was created to centralize the processing and handling of interstate cases. In addition, Missouri is collaborating with four other States in setting up a data processing program to permit the States to share information in tracking out-of-State orders and hearings.

## RECOMMENDATIONS

### Administrative and Judicial Organization

The commission found that the most critical problem in the CSE Unit is the lack of adequate staffing. To alleviate this problem, the commission recommends that caseloads be reduced from the current 1,600 to 1,800 cases per investigator to 400 to 600 cases per investigator. Such a caseload reduction would require creating approximately 227 additional positions. In addition, performance measures of CSE staff should be made a part of the contractual agreements between the CSE Unit and the counties in order to ensure that the county offices enforce collections cost effectively.

The commission recommends that the CSE Unit should be allowed to retain a portion of the payments collected in AFDC cases to operate CSE programs. The commission also recommends the creation of a centralized collection unit.

Finally, the commission suggests that the CSE Unit be elevated to division status and run as a cost-accountable business.

## Child Support

Of the commission's 69-page report, 19 pages are devoted to the subject of child support payment guidelines. This section covers the factors that should be considered in developing formulas for establishing the amount of child support, describes several formulas now being used or considered for use by other States, and evaluates the effects of different formulas on child support orders under a range of circumstances.

Most of the 10 recommendations in this section concern factors that should be considered in calculating the amount of child support. Among these factors are gross income, day care expenses, earning capacity, medical expenses, and geographical variation in costs.

The commission does not recommend any one formula but instead suggests that a task force be appointed to develop such a formula. The commission recommends that the following be considered in developing or choosing a formula:

1. The calculation for determining support should be based on the gross income of the obligated parent while allowing for certain deductions.
2. The cost of day care should not be considered in the calculations.
3. Allowances should be made for purposes of medical insurance.
4. Cost-of-living differences due to geographical location should not be considered in the calculation.

The commission recommends that, whatever formula is used, the judge should be allowed some discretion to modify the amount of support, not to exceed 10 percent of the support order.

As to enforcement of support orders, the commission notes that a contempt action is generally the only available remedy against a nonpaying, self-employed absent parent and that civil contempt orders rarely lead to incarceration. The commission therefore recommends that civil contempt warrants be served with the same efficiency as criminal contempt warrants and that they carry the same possibility of incarceration.

There should also be a mandatory minimum contempt sentence, and the time between the issuance of a warrant and the hearing on the contempt citation should be limited by law. A mandatory jail sentence should be set in cases where the nonpaying parent is convicted for the second time of failing to obey a court order to support the same child.

## Child Custody and Visitation

The commission recommends that one parent have primary physical custody of the children to facilitate the application of whatever child support formula is chosen by the State.

The majority of the commission believes that linking child support and visitation rights could result in children's being victimized by their parents' disputes and therefore recommends that there be no such linkage. A minority of the commission members disagree with this recommendation; their comments are found in the "Minority Opinion" section of this summary.

**Interstate Enforcement**

The commission makes 19 recommendations to strengthen the establishment and collection of interstate support payments. Those which may be helpful to other States are:

- Hire additional hearing officers to accommodate out-of-State requests
- Provide location services routinely on incoming cases
- Monitor payments on interstate cases, issue delinquency notices to obligated parents in arrears on their payments, and issue a monthly delinquency report to the appropriate IV-D agency
- Impose time limits on the courts to expedite cases

**Public Relations/Education**

The commission recommends that the State CSE Unit initiate a public relations campaign to educate the public in all aspects of child support enforcement. The campaign should include the publication of a booklet with basic information on the issue. The booklet would be distributed to schools, churches, day care centers, doctors' offices, and so on. Funds should be allocated to hire a public relations staff person to disseminate information to the public and to agencies and offices involved in child support.

**Minority Opinion**

The members of the commission are not in total agreement on one aspect of the child support issue. In the matter of visitation rights, the minority disagree with the commission's recommendation that there be no linkage of child support and visitation. The dissenting members state that abolishing this linkage is a departure from current Missouri practice. These members prefer to leave to the courts discretionary power to link the two under certain circumstances.

The minority also recommend that counsel be provided to absent parents under certain circumstances.

# Montana

Robert M. Holter, Chairman

The Montana Child Support Enforcement Advisory Council was created on November 26, 1984, in compliance with Public Law 98-378. The eight-member council gathered information on issues of child support, parent responsibility, divorce proceedings, and statewide enforcement through the public's response to statewide news releases. From this information, the council prepared the interim report summarized below. However, the council's recommendations are not complete, and no legislation has been drafted to incorporate these recommendations. The members therefore recommended to Governor Ted Schwinden that they or a similar body continue in existence through the 1987 Montana legislative session.

## CHILD SUPPORT

Montana's current statutory standards for determining child support payments offer only broad guidance and do not explain how to apply the standards to specific child support actions. The council, therefore, recommends that a more widely applicable and uniform support guideline be adopted by either court rule or by legislation. The members of the council tentatively recommend an adaptation of the guidelines developed by the Institute for Court Management of the National Center for State Courts in Denver, Colorado. The council plans, however, to study other guidelines and will make a final recommendation by June 1, 1986.

The council also recommends that, in determining child support payment amounts, children of prior marriages or relationships be given priority over subsequent children.

The council does not deal with methods of collection or enforcement in this report.

## CHILD CUSTODY

The council recommends that the State legislature adopt standards that ensure that a child is able to maintain a relationship with both parents. To do this, the council advocates "dual parenting responsibility" (joint custody) in which the child-rearing responsibilities are shared equitably by both parents.

This sharing of responsibilities would not occur, of course, if one parent is so physically or mentally disabled as to be unable to care for the child or if a parent has abused or neglected the child in the past.

## VISITATION

The council recommends that the Montana Code be revised to guarantee parents the right to spend time with their children. The council presumes that the best interest of the child requires visitation with the noncustodial parent no less than 25 percent of the calendar year, except in the case where parents have joint custody.

To ensure that the noncustodial parent's right to see his child is not interfered with, the council recommends that:

1) The custodial parent must receive the court's approval to move the child to another State.

2) The willful refusal of a custodial parent to allow a noncustodial parent to see their child be seen as a failure of the custodial parent to protect the best interests of the child, an action which may result in a modification of the custody order.

3) A parent convicted of custodial interference be liable to imprisonment for a term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

## DIVORCE PROCEEDINGS

The council believes that present divorce proceedings in Montana increase tensions between the divorcing parties with the result that the issues of child support, custody, and visitation rights are often not approached by the parents with the best interests of the child in mind. Therefore, the council recommends creating a statewide system of court commissioners. These commissioners would have an appropriate master's degree and specific training in mediation and conciliation.

The council also recommends that three documents be filed at the initiation of divorce proceedings: 1) the statutory petition; 2) complete confidential financial statements of both parties; and, 3) a child custody plan which emphasizes joint physical custody.

## STATEWIDE ACCEPTANCE OF RECOMMENDATIONS

The council is concerned with the issue of statewide acceptance of its recommendations because there exist some jurisdictional problems between the State of Montana and the various Indian reservations. The council recommends, therefore, that when the State adopts the recommendations of the council, the Governor take steps to have the issues involved negotiated with the separate tribes.

# Nebraska

Elizabeth A. Peterson, Chairperson

The Nebraska Commission on Child Support, established in December 1984 by Governor Robert Kerrey, was charged with assessing the effectiveness of the State's child support system and with making recommendations for its improvement. To carry out these responsibilities, the commission sent questionnaires to each of the county attorney's offices and to each pilot program office. These questionnaires solicited comments, opinions, suggestions, and factual data regarding each county's approach to the child support program. The commission also held eight town hall meetings where its members heard parents' viewpoints on Nebraska's child support enforcement practices.

In October 1985, the commission submitted an interim report to the U.S. Department of Health and Human Services. The commission's final report, which is not yet available, will contain recommendations for improving the Nebraska child support system and bringing it in line with the requirements of the Child Support Enforcement Amendments of 1984 (Public Law 98-378).

## ADMINISTRATIVE AND JUDICIAL ORGANIZATION

### Administration

Nebraska's child support enforcement program was established in 1976 in response to Title IV-D of the Social Security Act of 1975. The program is presently administered by the Child Support Enforcement Unit of the Enforcement Services Division of the State Department of Social Services and local county attorneys, district court clerks, and court referees.

In Douglas County, Nebraska's most populous county, there are three separate offices involved in the child support enforcement program: the Aid to Dependent Children (ADC) IV-D establishment office, with two attorneys; the ADC IV-D enforcement office, with two deputy county attorneys; and the non-public assistance IV-D office, with two deputy county attorneys. Most of the other heavily populated counties have full-time deputy county attorneys assigned to child support enforcement. In a few counties, the local district judge has appointed a private attorney to handle contempt proceedings. Custodial parents also have the option of hiring their own attorney to enforce support orders.

Seventeen of Nebraska's counties are now participating in a pilot program to improve child support collections. These counties are grouped into three geographic areas. Each area is staffed with one attorney to develop and service the caseload, two or three IV-D caseworkers trained by the attorneys to carry out paralegal tasks, and one clerical support person. The counties involved in the pilot program showed a 51 percent increase in support collections from 1983 to 1984.

## The Courts

In Nebraska, the 21 district courts have original jurisdiction over domestic actions, which include determining custody, establishing responsibility to pay support, establishing the amount of support to be paid, and enforcing support orders. Under certain circumstances, judges of both the juvenile court and the county court can and do enter such orders.

The duty of enforcement of child support collections has been placed with local county attorneys. The county attorney may also be charged with handling all delinquent child support cases in the county and with establishing paternity and securing support obligations on behalf of children born out of wedlock. In a few counties, the judge has appointed a private attorney as a "friend of the court" to investigate and, where appropriate, cite the obligated parent for contempt. Under this system, obligated parents are often required to reimburse the county for the fee of the friend of the court.

Recordkeeping duties for all child support orders are statutorily placed in the offices of the 93 clerks of the district courts. They are thus responsible for receiving all support payments from obligated parents, making payments to custodial parents, and compiling statistical information for both the State court administrator and the Nebraska Department of Social Services. In order to receive Federal incentive money, these clerks must also report annually on collections, disbursements, and arrearages in IV-D cases. They are not required to report any information on non-IV-D cases.

Each clerk's office is autonomous -- each clerk drafts his or her own forms, charges fees in addition to mandated filing fees, establishes individual policies on how long to hold checks for clearance of funds before payment is made to the custodial parent, and uses his or her own method of recordkeeping and reporting.

This locally controlled and operated system has resulted in fragmentation and inconsistencies among the courts and in inconsistencies and inadequacies in reporting.

## CHILD SUPPORT

### Amount of Support

At present, Nebraska does not have uniform guidelines for establishing the amount of child support. In some counties, judges have established guidelines and distributed them to the district court clerks within the county. In most cases, judges follow their own individual formulas, a practice which results in wide variations in child support awards.

The Child Support Commission has a subcommittee now studying guidelines used in other States, and the District Judges Association is also examining guidelines.

## Collection and Enforcement

When children receive public assistance, the custodial parent's rights to child support are assigned to the State. In addition, a custodial parent not receiving public assistance may have the State collect child support payments. To do this, the parent must complete an application form and pay a fee. This fee, now based on a sliding-scale formula, is being revamped to comply with requirements of the Federal amendments.

The duty of enforcing these payments falls to local county attorneys, who may use criminal and/or civil remedies in dealing with noncustodial parents who are delinquent in their payments.

In Nebraska, willful failure to support one's minor children is punishable as a Class II misdemeanor. If the failure is in violation of a court order, the offense becomes a Class IV felony.

Other, less drastic remedies that can be used to collect overdue payments include:

- garnishment of wages and accounts
- execution of liens on real or personal property to satisfy the support judgment
- withholding of earnings
- voluntary wage withholding
- voluntary and involuntary interception of unemployment compensation benefits
- interception of State and/or Federal income tax refunds (Non-ADC cases became eligible for State offset in 1985 and will be eligible for Federal offset in 1986.)
- interstate enforcement through the Uniform Reciprocal Enforcement of Support Act (URESA)

Despite the availability of these procedures, a surprising number of county attorneys do not use income withholding as an enforcement technique.

## CHILD CUSTODY AND VISITATION

Fathers testifying at the commission's town hall meetings consistently stated that they felt unfair preference was given mothers in determining child custody. They also felt that withholding or threatening to withhold child support was their only lever in ensuring their right to visit their children.

## INTERSTATE ENFORCEMENT

Under the present system, it is the local prosecutor's duty to enforce collection in both outgoing and incoming cases.

## PUBLIC RELATIONS/EDUCATION

At the suggestion of the commission, the Nebraska Department of Social Services has established a hot line for citizens to call to obtain information regarding child support problems. News releases announced this service across the State.

Since January 1985, committee members have participated in television and radio programs. In addition, the Department of Social Services has sent out frequent press releases and is now preparing a brochure describing child support services available to the public.

## RECOMMENDATIONS

In its interim report, the commission makes only five recommendations. The final report will contain further recommendations.

### Administrative and Judicial Organization

The commission suggests establishing a child support enforcement office, modeled on the lines of the three pilot programs now in operation, in each of Nebraska's 21 judicial districts. The members also urge that county attorneys involved in the present child support enforcement process be included in the development of these offices.

Because Nebraska does not have statistics available to show how long it takes a child support case to move through the system, the State is unable to substantiate its compliance with the Federal timetable. That timetable mandates that 90 percent of the cases be resolved in 3 months, 98 percent in 6 months, and 100 percent within a year of inception of filing. The commission suggests that the State address this problem.

The commission is still studying ways to deal more sensitively with divorce and child support issues. Ideally, trained mediators would meet with both parents before any court petition was filed and would explain child support issues to the parents. If necessary, the mediators would refer parents to counseling. An alternative system would be a system similar to that used in the juvenile courts; each master of the court would have a staff consisting of a bailiff/secretary and one or more mediators.

### Interstate Enforcement

The commission recommends the creation of a new, full-time position, that of URESA information agent. The agent's duties would include:

- directly assisting local offices in processing incoming and outgoing reciprocal actions
- acting as liaison between jurisdictions
- monitoring a central registry of URESA matters
- providing quick and accurate legal advice about URESA to local offices

- keeping abreast of the laws affecting URESA nationwide
- developing uniform pleadings and practices

**Public Relations/Education**

The commission recommends that a speakers bureau be created to inform the public of available support enforcement services. To encourage parents to continue working with the system to obtain support, the commission suggests using success stories. Finally, the commission recommends that children be educated to understand adult financial responsibilities for the children they will one day have.

# Nevada

Courtenay C. Swain, Chairperson

The Nevada Commission on Child Support presented its final report to Governor Richard H. Bryan in October 1985.

## CHILD SUPPORT

### Amount of Support

The commission considered the feasibility of establishing objective standards for setting support awards. In determining support obligations, the court should consider the health, economic and financial circumstances, and earning capacity of the parties, the manner of living to which the family has been accustomed, and the equity inherent in the situation. The commission feels that children should receive the same proportion of parental income that they would have received in the absence of marital dissolution (or nonformation).

An additional issue in determining support obligations is whether the parent's prior support obligations should take precedence over the needs of a new family. In the event of a second divorce, the commission feels that a feasible approach would be to subtract preexisting support obligations from net income before establishing the amount of a new order.

### Enforcement

In early 1985, the Nevada Legislature adopted laws intended to bring the State into conformity with the Child Support Enforcement Amendments of 1984 (Public Law 98-378). After the passage of those laws, the Federal Office of Child Support Enforcement published final regulations that make it necessary to amend Nevada's statutes, especially with regard to refining income withholding provisions.

The commission also discussed possible new legislation to facilitate child support enforcement. This legislation is covered in the "Recommendations" section of this summary under the subheading "Legislation."

## CHILD CUSTODY AND VISITATION

Public testimony revealed two areas that need further study. The first is joint custody and its implications for custodial parents. The second is the problem created by custodial parents' use of fictitious names in the school system to frustrate noncustodial parents' attempts to review school records and participate in school activities with their children.

## INTERSTATE ENFORCEMENT

In considering the effectiveness and uniformity of interstate obligations, the commission found a large discrepancy between the amounts Nevada collects for other States and the amounts other States collect for Nevada. For both public assistance and non-public assistance cases, Nevada's collections far outweigh collections made by other States on Nevada's behalf. The commission found that within Nevada, interstate and intrastate cases receive equal attention.

The report notes that Public Law 98-378 removes one disincentive for responding States to work on interstate enforcement cases. Formerly, only the initiating State received Federal incentive payments on the amounts collected in interstate cases. Under the new law, both initiating and responding States receive credit for collections.

The commission discussed several problems in interstate enforcement. Among those problems were:

- o lack of uniformity of laws among States
- o lack of availability of information within Nevada regarding interstate cases
- o difficulties caused when a party to a case moves to another jurisdiction after the case has been initiated
- o lack of timely notice to the initiating State of actions taken by the responding State, sometimes jeopardizing appeals procedures

The commission also discussed problems related to interstate paternity cases: whether the initiating or the responding State should pay for blood work and whether it is advisable that the Federal Government sponsor a laboratory to ease confusion about which labs should be used.

## AVAILABILITY, COST, AND EFFECTIVENESS OF SERVICES

The commission examined the availability, cost, and effectiveness of child support enforcement services provided to children receiving Aid to Families with Dependent Children (AFDC) and to children not eligible for AFDC benefits. The commission's findings include the following:

1. As evidenced by increased collections each fiscal year from 1977 through 1985, the child support program's effectiveness is growing.
2. For each dollar spent, the program collected $4.13, illustrating its cost effectiveness. It is likely that the program's cost effectiveness would be increased by the development of a centralized, statewide computer system for processing and tracking cases.
3. District attorneys who provide enforcement services in the various counties treat AFDC and non-AFDC cases equally.

The commission report expresses concern that the imposition of an application fee for non-AFDC clients as mandated by Public Law 98-378 will act as a barrier to free access to child support enforcement services. The commission felt that although the ideal solution would be a fee based on a sliding scale, a more manageable approach would be to set the fee low enough to make the program easily accessible even to low-income non-AFDC families.

The commission also examined the problem of cases that cannot be handled by the IV-D program under current directives from the Federal Office of Child Support Enforcement. The two types of cases involved are (1) child welfare cases in which children are in the custody of the State Welfare Division but are not receiving benefits under Title IV-A or Title IV-E of the Social Security Act and (2) cases in which medical expenses have been paid by the Welfare Division under Title XIX of the Social Security Act. The report argues that such cases ought to be eligible for Federal financial participation under the IV-D program. (Editor's note: These cases can be handled as IV-D non-AFDC cases upon the filing of an application for IV-D services.)

Increased public awareness is needed in several areas:

- employer awareness -- letting employers know about their responsibilities with regard to income assignments and garnishments and about penalties for discriminating against any employee whose income is assigned
- notification to custodial parents of the availability of child support enforcement services
- increased awareness of the benefits to the child that stem from payment of child support

## RECOMMENDATIONS

### Administrative and Judicial Organization

All personnel dealing with domestic relations matters involving children should receive specialized training.

The commission recommends the creation of a domestic relations court to handle all cases involving children. Use of trained masters and referees would enhance service in domestic relations. Masters should be given the power to issue contempt orders.

### Child Support

The commission recommends mandatory mediation for all cases that involve child support, visitation, and custody. Mediation should take place before court appearances occur.

In the mediation process, every effort should be made to ensure that where it is economically feasible, the noncustodial parent should provide for higher education or vocational training.

All support orders should include a fair and enforceable provision for medical, dental, optical, and other special needs. Support orders should be reviewed every 2 years.

Submission of income tax returns should be mandatory in all cases involving child support, both at the initial hearing and at review hearings.

After the noncustodial parent has been unemployed for 12 weeks, judges should issue contempt citations or orders to show cause; jail time should be ordered when appropriate.

Coercive measures, such as jail sentences and seizure of property, should be used to collect child support and arrearages when appropriate. The State should enact no statute of limitation on arrearages.

## Child Custody and Visitation

The commission recommends that court orders relating to visitation must be specific and enforceable with regard to the rights and obligations of both parents. The courts should exercise discretion to see that parents who pose a threat to the health and/or safety of their children do not automatically have visitation rights.

Visitation and support should be treated as separate issues. Support is not a prerequisite for visitation, nor is visitation a prerequisite for support.

Custodial parents should not be allowed to circumvent visitation without good cause and a timely hearing.

Jail sentences and other coercive measures should be used to enforce visitation rights in appropriate cases.

## Interstate Enforcement

All counties should report caseload statistics and information on interstate cases to the State child support enforcement program. A statewide centralized computer system should be developed.

When a party moves to another jurisdiction or when contact with a party is lost, the case should be transferred to the new jurisdiction or be inactivated. No case should be dismissed if there is a support order or arrearages in effect.

All counties and IV-D offices should immediately forward to the initiating State a copy of any court decision in a child support matter.

In interstate paternity cases, the initiating State should pay the initial cost of blood testing. The initiating State may use any laboratory that meets Nevada's validation requirements for blood testing.

The Federal Government should sponsor and fund a regional blood testing laboratory for use in both intrastate and interstate paternity cases, to ensure uniform lab results.

## Availability, Cost, and Effectiveness of Services

Incentive payments received by district attorneys offices should be returned to the child support program for the county rather than going to the county's general fund.

The commission recommends an extensive public awareness program, with participation at all levels from the Federal Government to the counties.

The commission recommends a $2 application fee for non-AFDC clients seeking child support enforcement services. (This $2 fee was implemented October 1, 1985.)

## Legislation

The commission recommends the adoption of legislation to bring Nevada into full compliance with Federal requirements.

Included in the commission's recommendations are legislative provisions that would:

- expand the powers of masters to include income withholding cases and to grant them the power to issue contempt orders and orders to show cause
- require a decision on all child support or paternity matters within 1 year of the filing of such actions
- require delinquent parents to continue to pay support beyond emancipation of the children to retire arrearages
- provide that custodial and noncustodial parents are entitled to access to all records pertaining to their children unless the parent has been judicially deprived of visitation or custodial rights
- mandate inclusion in the pre-high school curriculum of studies pertaining to the moral and legal responsibilities of parenthood

The commission also recommends that the Federal Office of Child Support Enforcement study the possibility and feasibility of a uniform law on the duty to support children.

## Extended Life of the Commission

The commission recommends that it remain constituted to study the following issues, in addition to others that may be presented:

- the development of a mandatory mediation system in matters of custody, visitation, and child support
- the development of a method to make the courts more accessible to custodial and noncustodial parents to enforce their rights
- the development of a method by which the courts can conduct a biennial review of all visitation, custody, and support issues
- the impact of out-of-State divorce decrees on child support, what effect the Uniform Reciprocal Enforcement of Support Act (URESA) has on such orders, and whether such orders are or should be modified by an action pursuant to URESA

- the establishment of child support guidelines
- the evaluation of the current status of Nevada statutes
- the feasibility and benefit of a centralized, statewide computer system to be used by all counties and all IV-D offices
- the feasibility of adopting a formula for the recovery of arrearages through income withholding without the necessity of petitioning the court

# New Hampshire

David Engel, Chairman

The New Hampshire Governor's Commission on Child Support first met in February 1985 and submitted its interim report October 1, 1985. The commission's stated goal was to make recommendations that would reduce child support delinquency, which would, in turn, reduce the need for punitive enforcement measures.

The interim report consists largely of recommendations for improved child support enforcement and parental involvement in domestic relations matters.

## ADMINISTRATIVE AND JUDICIAL ORGANIZATION

The commission recommends for interim study the establishment of a 2-year, three-member marital commission pilot program with the power to hear cases on issues of divorce, annulment, separation, or marriage dissolution and to remove the necessity for legal counsel.

The commission also recommends study of a liaison committee to serve between the superior court system and the State Office of Child Support Enforcement (OCSE). This committee would have under its purview such issues as uniform procedures regarding show-cause hearings and notification to OCSE of petitions for modifications or results of modification orders, analysis of a forfeiture bond instead of bail for delinquent child support obligors or visitation contempt violators, and development of procedures regarding the custodial parent's refusal to allow visitation as directed by court order.

There should be more cooperation between district offices of child support enforcement and the county sheriffs' offices and clerks of court.

The current court system should be reviewed to propose a way of alleviating the backlog of divorce petitions. Further consideration should be given to studying the advisability of phasing out the marital master system.

## CHILD SUPPORT

### Amount of Support

The commission has proposed and decided to study further a uniform system to determine the amount of child support payments. Such a standard would be based upon a percentage of parental gross income and assets, affected only by the number of children. Percentages are proposed: 17 percent of parent's income for one child, 25 percent for two, 29 percent for three, 31 percent for four, and 34 percent for five or more children. This standard would be applied against the absent parent's gross income and assets.

**Enforcement**

Sanctions against delinquent payors are specified in HB 734, for which the commission recommends passage with the addition of increased due-process provisions. Among sanctions proposed are stronger wage-withholding procedures, a process for imposing liens on real and personal property, and exchange of information regarding delinquent payors between credit agencies and the State OCSE.

HB 735, which mandates cooperation between employers and financial institutions in providing information to child support enforcement personnel, was endorsed by the commission and became law effective October 1, 1985.

Finally, the commission recommends adoption of a support affidavit to facilitate child support enforcement. A sample of this form is appended to the commission's report.

## CHILD CUSTODY

The report advocates a 2-year trial of mandatory mediation in one county of the State. Under this provision, one session of mediation will be required in any proceeding involving custody or visitation issues with minor children.

The commission cites figures showing the preponderance of custody awards to mothers. After hearing arguments in favor of joint physical and legal custody, the commission decided to study the matter further. The commission has referred to interim study a bill (HB 713) that establishes criteria for physical custody decisions and factors for determining the child's best interests in terms of custody.

## VISITATION

Suggesting that inadequate enforcement of visitation rights may be partly responsible for delinquent child support payments in some cases, the commission makes a series of recommendations to increase the rights of noncustodial parents. Those recommendations include providing an expedited system within the judicial system to handle enforcement of visitation, devising penalties for noncompliance with visitation rights, and expanding the application of the Federal Parental Kidnapping Prevention Act and the Uniform Custody Jurisdiction Act to include visitation problems.

## INTERSTATE ENFORCEMENT

The commission recommends that New Hampshire's participation in the New England Interstate Compact be reviewed. The compact's goals include developing a regional interstate directory, developing standardized forms and procedures for interstate cases, and examining the feasibility of a regionwide communication network for tracking activity in interstate cases.

## New Jersey

Thomas P. Zampino, Chairperson

The New Jersey Commission on Child Support submitted its final report, "Findings and Recommendations," in September 1985. The report represents findings and conclusions drawn from five public hearings and the commission's deliberations.

### ADMINISTRATIVE AND JUDICIAL ORGANIZATION

#### Functions

Child support services are carried out by the 21 counties, acting under the direction of the New Jersey Bureau of Child Support and Paternity Programs.

On the county level, several agencies are involved. These agencies include the county welfare agency, county probation department, county law department, and the family court intake unit. Location services for establishing paternity and enforcing support orders are available through the county welfare agencies' child support and paternity units and through the county probation departments.

Whether the case is welfare or nonwelfare, a petition for support payments is filed with the county family court clerk's office. That office schedules a consent hearing or court hearing date to establish an order. When a family court judge, referee, or hearing officer establishes an order, it is forwarded to the county probation department for enforcement. The county probation office forwards support payments to the proper recipient -- either the custodial parent or, in AFDC cases, the county welfare agency.

#### Problems

The commission report notes a need for greater integration and for adequate preventive services, such as family counseling. Counseling could help prevent lengthy litigation, which often places children at risk. New and improved court-related services and easier access to filing for and receiving economic support are also needed.

The county probation departments and courts generally operate only during regular business hours. This makes it difficult for working parents to meet with the investigators or to attend court hearings or consent conferences.

Currently, New Jersey's child support enforcement system operates on a mostly manual basis, with each county operating separately. Because of this, the program suffers severely from a lack of available information as to delinquency, distribution, and general case management.

To alleviate these problems, the New Jersey Bureau of Child Support and Paternity Programs has received approval for 90 percent Federal funding to implement an automated system. The Automated Child Support Enforcement System (ACSES) will provide for a better flow of information between the State department of human services, the administrative office of the courts, and the county welfare agencies and probation departments. ACSES will standardize statewide child support processes, automate the distribution of collections, and provide on-line access to case files.

## CHILD SUPPORT

### Amount of Support

The Child Support Enforcement Amendments of 1984 require each State to establish uniform judicial child support guidelines. A subcommittee of the New Jersey State Supreme Court has recommended guidelines that are expected to be implemented by December 31, 1985.

The guidelines are based on the income shares model, which simulates spending in an intact household. The proportion of income allocated to the children depends on total family income. Child support payments are based on net earnings.

In its proposed court rule, the supreme court subcommittee modified the model's schedule of support amounts by applying to it a plus or minus 5 percent range to allow some flexibility in considering individual case circumstances. The rule also allows for considerations that would make the guidelines inapplicable.

### Enforcement

County probation departments use a number of collection techniques to enforce child support orders. These include unemployment compensation intercept, wage withholding, and Federal and State income tax offset.

The New Jersey Support Enforcement Act of 1985 enables county probation departments to enter an income withholding order when the obligated parent is delinquent in an amount of support equal to 14 days. The only basis for contesting withholding is mistake of fact, meaning that there is a mistake in identity or that the obligor is not in arrears. Beginning in October 1985, income withholding will be entered on all delinquent support orders and will be binding on all sources of income, regardless of jurisdiction. The 1985 statute also has provisions for imposing liens and the posting of bonds upon self-employed individuals.

If a support enforcement agency finds that a delinquent parent is receiving unemployment compensation or trade adjustment assistance benefits, the State Department of Labor is required to withhold a portion of the benefits in order to pay the outstanding support obligation.

Beginning with tax year 1985, Federal and State income tax offset is being extended to non-AFDC families. Federal income tax offset will be available in nonwelfare cases with arrears of $500 or more, at the request of the custodial parent. The New Jersey Support Enforcement Act of 1985 makes it possible for a nonwelfare custodial parent to request the offset of a delinquent parent's State income tax refund or homestead rebate.

These measures are not the complete answer. Determined noncustodial parents can still find ways to conceal their assets -- or their whereabouts. But the child support enforcement program is growing, as evidenced by the continuous increase in both AFDC and non-AFDC collections.

## CHILD CUSTODY

New Jersey's present standard for determining custody is that the decision should be in the best interests of the child. The adversarial approach to custody resolution often requires the parents to belittle each other's parenting skills, at a time when the child (or children) needs both parents. At present, there is no requirement that parties in a custody dispute seek counseling or mediation.

## VISITATION

Many court orders contain provisions for visitation with the noncustodial parent. When the parent is denied visitation, there is no readily accessible enforcement agency. A parent must file a motion concerning visitation denial and await a court hearing. No one monitors visitation or enforces it on behalf of either parent. Again, there is no provision for mandatory counseling or mediation.

## INTERSTATE ENFORCEMENT

### Modification of Orders and Arrearages

As presently administered, the Uniform Reciprocal Enforcement of Support Act (URESA) system does not give full faith and credit to existing support orders from the initiating State. The responding State often modifies support orders without notifying the initiating State and the custodial parent until after the court hearing. Similarly, the responding State sometimes modifies or vacates arrearages -- again without prior notice. Generally, there is no explanation of the action taken.

### Costs of Paternity Cases

Federal policy is that the responding State is responsible for the cost of blood testing when parenthood is at issue. Experience has shown that this policy is not effective. When paternity is established, it is the initiating State that will reap the benefits of the support collected, in the form of Federal incentive payments and reduced welfare costs.

## RECOMMENDATIONS

In its report, the New Jersey commission made 22 formal recommendations on topics ranging from education to the provision of job training for underemployed or unemployed obligated parents. The recommendations with the widest applicability are summarized here.

### Administrative and Judicial Organization

The commission recommends that a portion of the State share of child support collections be used to pay for additional services to families who require assistance under the child support program.

To increase access to the system, courts and county probation offices should have extended evening and Saturday hours. To reduce costs to the parents, the commission recommends that each county develop and publicize informational packages on self-representation in hearings regarding support enforcement or modification and visitation.

### Child Support

To make it easier to enforce support orders on self-employed parents, professional and occupational licenses should be issued or renewed only if support payments are current.

To assist in locating and summoning delinquent obligors, the commission recommends that Federal and State legislation be amended to require social security numbers on all drivers' licenses. The information would not be disseminated to credit agencies or other individuals.

The commission recommends that after the court's second finding of willful withholding of support within a 2-year period, the delinquent parent should be jailed for at least 48 hours.

### Custody

Although joint custody may be appropriate in some cases, joint custody should not be a legal presumption.

In all contested custody matters, the court should refer the parties to a mandatory counseling or mediation session.

### Visitation

When visitation rights are contested, counseling or mediation should be mandatory.

The court system should ensure immediate access to the family court intake unit for the enforcement of adjudicated visitation rights. A hearing should be held within 10 days if the intake unit cannot resolve the complaint.

## Interstate Enforcement

In interstate cases, the responding State should be required to give full faith and credit to support orders issued by the initiating State. Judges in other States should also not be allowed to change or vacate arrears.

The commission also recommends that the initiating State be responsible for the cost of blood tests. If paternity is established, the responding State can recover the fee from the defendant on behalf of the initiating State.

To reduce confusion, URESA forms and petitions should be standardized nationwide.

## Continued Life of Commission

Because the commission identified concerns that require further study, its members have recommended that the commission continue, with an expanded membership, until they have studied all critical issues and have made additional recommendations.

# New Mexico

Benny E. Flores, Chairman

The New Mexico Child Support Enforcement Study Commission, created in November 1984 in response to the Child Support Enforcement Amendments of 1984 (Public Law 98-378), presented its final report to Governor Toney Anaya on October 1, 1985.

To guide them in reviewing specific issues, the commission members developed a list of basic premises regarding child support. Foremost was the belief that all parents should support their own children, both financially and emotionally, to the full extent of their ability. The members' paramount concern is the protection and enforcement of the rights of all children, whether or not they are receiving public assistance. The commission held public meetings and received testimony from the general public and experts in fields related to child support. In addition, various subcommittees reviewed numerous reports, studies, legislation, and other documentation. The commission also set a number of goals to improve child support services; these goals are enumerated in the report.

## ADMINISTRATIVE AND JUDICIAL ORGANIZATION

New Mexico's child support enforcement program is a bureau within the Income Support Division of the State Human Services Department. Central office staff and a field staff in six regional offices carry out the operation of the program.

The support enforcement program, now in its ninth year, continues to increase child support collections at an average of 25 percent per year. For non-public assistance cases, there is a $20 application fee, and small amounts -- about 10 percent of monthly collections -- are withheld from collections to recover the costs of providing this service.

## CHILD SUPPORT

### Amount of Support

The State has been required to bear the financial burden of supporting thousands of children in large part because there is no single statewide standard for the uniform establishment of equitable child support orders. The lack of a single standard has led to substantial variation in the amount of support ordered on behalf of families in like circumstances. This problem is compounded by the ordering of awards that in most cases fall far short of the amount needed to provide basic necessities of life.

The inadequacies of the current process can best be remedied by establishing an equitable schedule of support. The report lists a number of factors to be considered in drawing up support guidelines, including the resources of both parents and their second spouses.

A State law passed in 1985 places responsibility for developing support guidelines on the Human Services Department.

### Enforcement

The Child Support Enforcement Bureau has been unable to enforce child support laws effectively on Indian land. The commission heard testimony that the problems were due to differing levels of governmental sophistication among the State's tribes and pueblos, as well as the Indians' concern about State encroachment on their jurisdiction and sovereignty.

### Availability of Services

Approximately half of the child support cases in New Mexico are presently without support orders. Many of those who testified before the commission expressed frustration at the fact that child support services were not readily available. The Child Support Enforcement Bureau assigns a maximum of 650 cases to each of its officers, leaving over 45,000 cases unassigned.

Once the bureau files the child support petition in district court, it takes several months before a support order is obtained. Over half of the court-ordered support becomes delinquent within the first 3 months.

## CHILD CUSTODY AND VISITATION

In its report, the commission notes a number of problems in the areas of custody and visitation. Among those problems are gender preference in custody awards, lengthy delays in resolving domestic relations cases, overburdened court dockets, and lack of professional assistance such as mediation and counseling in resolving issues.

## INTERSTATE ENFORCEMENT

Although all States have some form of Uniform Reciprocal Enforcement of Support Act (URESA), the system is not effective. The commission report suggests three main reasons why out-of-State cases receive low priority:

1. The out-of-State client appears only through official documents, so sympathies may lie more with the party physically present.
2. There is a lack of uniformity between the district attorney's office and the State Human Services Department in the establishment and enforcement of interstate child support obligations.
3. Owing to a shortcoming in New Mexico's long-arm-jurisdiction statutes, the Human Services Department cannot establish paternity in New Mexico courts for a child born in New Mexico if the alleged father resides outside the State.

## RECOMMENDATIONS

All of the recommendations contained in the report have the unanimous support of the commission.

### Administrative and Judicial Organization

The commission recommends that the Human Services Department increase the visibility and status of the Child Support Enforcement Bureau.

### Child Support

The Human Services Department should, as soon as possible, provide adequate staffing to make it possible to process cases in a timely manner. The department should continue to enhance its automated child support enforcement system.

The commission recommends that the New Mexico Supreme Court or Legislature, as appropriate, be requested to study and implement the standards of support to be developed by the Human Services Department.

To help obtain support for all children, the State should adopt a uniform parentage act.

### Child Custody and Visitation

The legislature should expand current statutes to state that there should be no gender preference in making custody and visitation recommendations.

Statutes should be amended to establish a rebuttable presumption that joint legal custody be awarded unless the court finds that it is not in the best interest of the child. Judicial decisions should state on the record the basis upon which the custodial award is made.

The commission makes several recommendations designed to expedite proceedings related to custody and visitation:

1. Each judicial district should have at least one domestic relations judge.
2. Mediation services should be available for resolution of custody and visitation disputes.
3. Special masters should be used wherever appropriate.
4. The State bar association should include in its canons of ethics sanctions for using custodial or visitation rights in an effort to obtain unfair advantage without regard to the best interest of the child.

A new and separate commission should be appointed to study support, custody, visitation, and other issues identified in public hearings.

# New York

Ronnie Eldridge, Chairperson

The New York State Commission on Child Support presented its first report to Governor Mario M. Cuomo on October 1, 1985. That report, which is summarized here, contains the commission's findings and recommendations after its first year of work; future reports will address issues in more detail and offer further recommendations.

## ADMINISTRATIVE AND JUDICIAL ORGANIZATION

### Administration

In New York, the child support enforcement agency is located in the umbrella agency of the New York State Department of Social Services, which provides coordination and assistance to the local IV-D agency in each county. In most counties, the local IV-D agency is located within the county department of social services; in one, it is located in the department of finance.

In 1984, New York recovered 3.6 percent of its payments under the Aid to Families with Dependent Children (AFDC) program through child support collections, placing it 51st of 54 States and jurisdictions. This low ranking is explained in part by the fact that New York is a "high benefits" State. The State ranked 37th in cost-effectiveness, collecting $2.03 for every dollar spent in 1984.

The amount of support collected and the cost-effectiveness of agency operations vary from one county to another. As one of many possible factors explaining this variation, the commission report notes that the overall objectives of the IV-D agency have not been sufficiently clarified. Thus, different agencies may be emphasizing different aspects of the program to the exclusion of others.

The potential for improvement is great, as is the need for improvement. With increased emphasis on providing all services to non-AFDC families and with the further requirement that these services be advertised, the number of clients is likely to increase.

### The Courts

To be effective, a child support order must be established and enforced within a reasonable period of time. The New York State Support Enforcement Act of 1985, effective November 1, 1985, contains major provisions to improve the handling of support matters.

The act provides for a quasi-judicial "expedited process" in family court. Hearing examiners will now be able to hear and determine support cases, rather than recommend a decision to a judge, and they can enter orders of paternity based upon uncontested, voluntary acknowledgments by the putative father. They can also enter default orders and employ all support enforcement remedies except penalties for contempt of court, which are still reserved to judges. Although the determination of a hearing examiner may be enforced in the same manner as any final order, the parties have 30 days to submit written objections to a family court judge.

Hearing examiners may not hear issues of custody, visitation, contested paternity cases, and certain other issues. Such cases will be referred to a judge, but only after temporary support is ordered.

Prior to any adjournment, whether before a judge or a hearing examiner, either a temporary or a permanent support order must be entered. Temporary orders may be enforced in the same ways as permanent orders. The new law also sets forth the specific time periods required by Federal regulations for cases to reach disposition.

## CHILD SUPPORT

### Amount of Support

New York State has had a child support formula since 1978. But it is in the regulations of the State Department of Social Services; it does not have the weight of law. Further, the formula calls for such a wide range of possibilities that it is not very helpful. It is complicated, outdated, and, the commission found, rarely used.

In the absence of a formula and guidelines for its application, the amount of support awarded in similar situations continues to vary from court to court and case to case. This apparent arbitrariness is likely to leave both custodial and noncustodial parents feeling frustrated and ill-used.

### Collection and Enforcement

For many years, New York has had in its laws most of the enforcement tools that were required or suggested by the Federal Child Support Enforcement Amendments of 1984. The New York State Support Enforcement Act of 1985 made improvements in four major areas:

1. The law amends the Civil Practice Laws and Rules to allow for income withholding to enforce a delinquent support order without the necessity of returning to court to obtain an additional order.
2. The new law makes available to non-AFDC recipients all the enforcement tools that had previously been available only to AFDC recipients. These include State and Federal income tax intercept and withholding of child support obligations from unemployment insurance benefits.

3. State income tax intercept can be used to collect past-due spousal support, as well as child support.

4. Child support obligations may be withheld from any earned, unearned, taxable or nontaxable income, workman's compensation, disability benefits, unemployment insurance benefits, and Federal Social Security benefits, except those excluded by Federal law. ("Needs-related" benefits such as public assistance or Supplemental Security Income are exempted.)

After hearing testimony about the difficulty of obtaining compliance with court-ordered support, the commission concluded that there are many remedies available that are not used. Sometimes they are not used because not only petitioners but attorneys and judges do not know they are available. In other cases, judges are simply reluctant to enforce the law to its full extent. In New York, prosecution for criminal nonsupport, for example, is almost never used, nor is incarceration for civil contempt, yet in some cases these are very effective remedies.

The commission plans to evaluate the efficacy and feasibility of requiring deduction of child support payments from the wages of all obligated parents automatically upon an initial order without the necessity of a default.

## CHILD CUSTODY AND VISITATION

The commission limited its examination of custody and visitation issues to their connection, if any, with the payment of child support. The report notes that the only systematic study of custody arrangements and support payments does not support the position that joint custody awards, even when voluntarily chosen, result in greater compliance with support orders. Nor is there data to support the assumption that interference with visitation is the primary reason for not paying child support.

Although some cases in New York have held that child support payments should be suspended or reduced because of a move or systematic interference with visitation, this remedy is not specifically authorized by statute. Enforcement of visitation orders in general is difficult.

Visitation and support issues are not clearly separated by statute. However, under the new law, a hearing examiner must first set the support amount; all other issues are referred to a judge for determination. Anecdotal evidence suggests that, when the proceedings are separate, relatively few noncustodial parents follow up on the visitation or custody matter.

## INTERJURISDICTIONAL ENFORCEMENT

New York, while it did not enact the text of the Uniform Reciprocal Enforcement of Support Act (URESA), has a very similar law, the Uniform Support of Dependents Law (USDL), which suffices for reciprocity in all other jurisdictions. The statute also applies to intercounty cases within New York.

Interjurisdictional enforcement of support is weak and needs to be improved. Procedures are far from uniform, and there is a widespread feeling that awards are lower and enforcement is pursued reluctantly in interstate cases.

The commission did not address the interjurisdictional issue fully in its first year and will study it in more detail in the coming year.

## CLIENT NEEDS

The commission report examines the needs of both AFDC and non-AFDC clients and also gives attention to the special needs of battered women.

During the course of the relationship between the IV-D agency and the AFDC applicant or recipient, conflicts of interest may arise:

1. A conflict may arise when a mother seeking public assistance is required to assist in establishing paternity, without full awareness of the implications of such a finding for her and her child.
2. A conflict may arise in setting support amounts. The IV-D agency may seek only enough to recover AFDC payments, rather than seeking a larger award. A problem also arises if an AFDC recipient receives just enough support to become ineligible for public assistance, especially if payments are irregular.
3. A conflict may arise if there is a misunderstanding of the attorney-client relationship. Is the IV-D attorney representing the recipient or the IV-D agency in seeking a support order? This is an important issue, because the client, in helping the attorney build a case to show that the absent parent can pay support, may divulge information indicating an overpayment of AFDC benefits. Is the client protected by the attorney-client privilege?
4. In some cases, without the knowledge or consent of the AFDC recipient, the IV-D agency negotiates with the obligated parent and agrees to "compromise" arrears accrued to the date the custodial parent began receiving AFDC benefits. This means the client cannot later seek a money judgment on the arrears.

Non-AFDC clients have difficulty obtaining legal representation and investigatory services, primarily because they are so expensive. In addition, some attorneys will not represent petitioners in support cases because the likelihood of collecting is so slight. Those who cannot afford an attorney at all are not entitled to court-appointed counsel, unlike indigent respondents in child support cases.

The commission also cites a need for more public education to inform non-AFDC recipients of the services available to them and to educate them in the workings of the court system.

The report notes that battered women have special problems with both child support and visitation. In many cases, the threat of violence is so severe that the woman does not seek child support at all. When visitation is granted, needs for supervised visitation are sometimes not met.

## RECOMMENDATIONS

The commission's lengthy report contains more than 100 recommendations. Some of those that may be helpful to other States are mentioned here.

### Administrative and Judicial Organization

The commission report includes some 20 recommendations for improving or expanding services at every level. For example, the commission recommends that the Federal Office of Child Support Enforcement should provide greater computer interface with other programs in order to obtain wage and credit information. At the State level, the commission recommends increased monitoring of county agencies. And at the local level, the commission urges counties to establish procedures to facilitate prompt initiation of enforcement actions.

Court orders that require the respondent to make payments through the IV-D agency should include information about the respondent's employment and residence, so the IV-D agency can follow up if there is a default. An automated information system would be helpful in making and updating orders.

The commission recommends increased education and training for judges and hearing examiners in the area of child support.

### Child Support

The commission urges that the State take the time necessary to develop a sound child support award formula. The formula should be set forth in a statute, and judges and hearing examiners should be required to justify any departure from the formula.

Similarly, judges and hearing examiners should be required to state the factors which they considered in awarding or declining any particular enforcement remedy or penalty for noncompliance.

The commission also requests new legislation increasing penalties for willful failure to pay child support and legislation to facilitate enforcement against self-employed obligors -- for example, widening the scope of discovery so that information can be gathered about transfers of assets.

Legislation should be passed so that the New York State wage reporting service, available now only for AFDC cases, can be made available to IV-D agencies for non-AFDC clients.

### Child Custody and Visitation

Domestic relations law and the family court act should be amended to make it clear that visitation and support are separate issues.

Legislation should be enacted requiring specificity in custody and visitation orders.

Courts should make more use of orders for supervised visitation in appropriate cases, and funding should be provided so that such orders can be carried out.

For failure of visitation, the custodial parent should be awarded compensation for reasonable expenses incurred; for interference with visitation, restitution should be in the form of additional days of visitation.

**Interjurisdictional Enforcement**

The State should develop a uniform system for use within the State to facilitate enforcement across county lines.

**Client Needs**

AFDC applicants or recipients should be made aware of possible conflicts of interest in their relationship with the IV-D agency, so that they are capable of making informed decisions.

Until the issue of attorney-client privilege is clarified, AFDC recipients should be told that information they provide the IV-D attorney may not be kept confidential.

The IV-D agency should be restricted to compromising only those arrears accrued after the client began receiving AFDC payments.

New legislation should be passed to provide court-appointed counsel for indigent petitioners in child support proceedings. State and local funds should be made available to local legal services and community advocacy groups to assist non-AFDC clients in obtaining child support. Further, judges should be encouraged to award meaningful attorneys' fees, so that private counsel do not shy away from child support cases.

IV-D services should be better publicized, and informational booklets should be developed to help all persons seeking support.

Follow-up programs should be established to assist battered women in obtaining child support while providing them with protection against further violence. Courts should grant supervised visitation when it is appropriate, and counties should provide facilities for such visitation. Further, IV-D agencies and groups who provide services to victims of domestic violence should keep statistics on victims who do not pursue child support out of fear of further abuse.

# North Dakota

Ruth Meiers, Chairman

The North Dakota Commission on Child Support held eight public hearings throughout the State and also solicited written comments. In several meetings, the commission studied draft child support legislation and formulated recommendations, which are contained in the final report presented to Governor George A. Sinner in October 1985.

The report addresses legislative, congressional/Federal, administrative, and judicial issues. It also includes the text of recommended draft legislation. In many instances, the commission sent letters to official bodies, such as the State bar association, to express the commission's views and enlist the aid of these bodies in addressing child support problems. These letters of request and recommendations are included in the report.

## ADMINISTRATIVE AND JUDICIAL ORGANIZATION

The IV-D program in North Dakota is administered by the counties and supervised by the State Department of Human Services. The individual county social service boards have collectively agreed to administer the IV-D program through eight regional units.

Some of these regional units are directly administered by the parent county social service board, others are directly administered by the parent county State's attorney. The administration of these offices varies substantially. Some are strongly controlled by the county social service board or by a board of directors, while others function with virtually no supervision. In effect, the eight regional units are separate from one another.

Public hearings revealed that not all services were being provided by all the regional units and that in some instances applicants were not treated with dignity. In addition, the efforts of the regional units are not always uniform or consistent.

A further concern is the lack of public awareness of the availability of child support services to non-public assistance families. The North Dakota Department of Human Services has begun to advertise IV-D services through public service announcements, news releases, and mass mailings. The commission encourages the department to continue these efforts.

The report notes that at present, North Dakota does not meet the requirements of the Child Support Enforcement Amendments of 1984 (Public Law 98-378) for expedited judicial process or for an administrative process for handling child support cases. Expedited judicial process would require that each judicial district have a referee to hear child support matters.

## CHILD SUPPORT

### Amount of Support

The commission report notes wide variations in the levels of support established by the courts, in spite of the existence of minimum contribution guidelines. Still, a survey taken by the commission indicated that the guidelines are being used.

One of the complaints heard most often at the public hearings was that modifying a court order is too costly. Because public IV-D agencies do not do modifications, private counsel must be sought.

### Collection and Disbursement

The State child support agency issues support checks to families in the IV-D program. In non-public assistance cases, the custodial parent receives the full amount paid by the noncustodial parent. When the custodial parent is receiving assistance through the Aid to Families with Dependent Children (AFDC) program, the State retains all but $50 each month to defray AFDC expenses.

The passthrough was established by Federal law, effective October 1, 1984. This provision allows for up to the first $50 of current child support each month to be passed through to the custodial parent without affecting the amount of public assistance the family receives.

The commission opposes this passthrough, offering several arguments against it in the report.

### Enforcement

Clerks of the district court are responsible for enforcing child support obligations in North Dakota. Because few statutory requirements are imposed on the clerks, enforcement varies widely.

Public Law 98-378 places a number of requirements on States relating to child support enforcement, including specific time limits for disposing of cases and specific remedies for nonpayment of support. North Dakota already meets some of the mandated requirements, and the State Department of Human Services will draft necessary legislation and introduce it to the 1987 legislative session. The required legislation will include State tax offset for non-AFDC individuals and amendments to wage-withholding statutes.

Noncustodial parents who willfully avoid their child support obligations may be sent to jail. This raises concerns about the fact that, under current North Dakota law, indigent delinquent parents do not have the right to a court-appointed attorney.

The commission report points out that enforcement of child support obligations is a profit-making venture. But limitations on budget and staff can limit revenues returned to the State.

## CHILD CUSTODY

Testimony at public hearings indicated a concern that little or no consideration is given to awarding custody to the father. The commission questions the use of an adversarial system for determining custody.

## VISITATION

Although both the commission and those who testified at public hearings recognize that visitation is as important to the child as financial support, there is virtually no enforcement of visitation rights on behalf of the noncustodial parent. The cost of hiring private counsel is frequently prohibitively high, and no assistance is available from public agencies.

The commission drafted a bill to address the problem of enforcement of visitation rights. The bill allows a noncustodial parent to apply to the court for enforcement of court-ordered visitation rights.

## INTERSTATE ENFORCEMENT

Interstate enforcement of child support is not working. Although Federal and State statutes require uniform reciprocal enforcement, there is no effective mechanism in place to force States to comply with the statutes and cooperate with one another.

Commission members also agree that Congress should deal with the enforcement of visitation rights across State lines.

## RECOMMENDATIONS

### Administrative and Judicial Organization

The commission recommends that the North Dakota Department of Human Services study the efficiency and effectiveness of consolidating all department recovery functions (e.g., child support enforcement, fraud, and probate recoveries) into one central administrative unit.

The commission also recommends the establishment of a North Dakota Family Support Council to provide a forum for education and the exchange of ideas and to promote necessary legislative or administrative changes.

### Child Support

The State supreme court administrator's office and the State bar association should review the statutes and procedural rules relating to the provision of efficient and consistent enforcement of child support.

The commission recommends that Congress eliminate the $50 passthrough established in 1984.

## Child Custody

The commission recommends that the judicial branch of government study the concept of using trained personnel acting as special masters to determine the best interests of the child in awarding custody. Consideration should also be given to other ways of settling disputes, along with a review of joint custody statutes.

## Interstate Enforcement

Congress should enforce the requirements of interstate child support legislation and should establish methods of enforcing interstate visitation laws.

## Legislative Issues

The commission recommends that the State legislature examine the need for administrative process and expedited judicial process in establishing an efficient, effective, and economical child support system in North Dakota.

Legislation should be drafted to give the North Dakota Department of Human Services more direct control of the administration of the IV-D program to provide uniformity in county administration.

As long as the child support enforcement program maintains a profit margin, provisions should be made through the budgeting process to allow additional staff and a higher funding level.

In an attempt to make modifying a support order less time-consuming and less costly, the relevant statutes should be reviewed.

Legislation should be drafted to set out explicitly the duties and responsibilities of clerks of court with regard to child support enforcement.

The North Dakota Supreme Court Indigent Defense Commission should examine the need for legislation to provide for court-appointed attorneys for indigent delinquent parents facing jail sentences.

The commission recommends that the State Department of Human Services draft all necessary legislation to bring North Dakota into conformity with the Child Support Enforcement Amendments of 1984.

## Ohio

Andrew I. Schwebel, Chair

The Ohio Governor's Commission on Child Support Enforcement submitted its final report to Governor Richard F. Celeste on October 1, 1985. The recommendations contained in that report are summarized here. Included in the report, but not in this summary, are minority reports and comments by individual members, along with voluminous appendices. The appendices contain a variety of studies and booklets on child support-related topics.

### ADMINISTRATIVE AND JUDICIAL ORGANIZATION

The State of Ohio operates a county-administered Child Support Program. Child support functions are located in different parts of the county organizational structure. These local programs were intended to complement each other, but today Ohio has what amounts to two separate child support enforcement systems, the Bureau of Support and the Department of Human Services, that are not sufficiently coordinated and that create duplication of effort. To remedy this situation, the commission recommends that the Ohio Department of Human Services, as the State IV-D agency, establish a Division of Child Support Enforcement to regulate, coordinate, monitor, and assist in child support enforcement in all 88 counties.

The commission recommends that court rules and practice provide for uniformity in juvenile and domestic relations court proceedings. The rules of superintendency should be amended to provide a reporting system that would clearly indicate the status of each judge's docket of child support enforcement cases. Such cases should not be delayed by the filing and/or hearing of other domestic relations issues such as child custody and visitation.

### CHILD SUPPORT

#### Amount of Support

The commission recommends that Ohio adopt guidelines for use in establishing child support, as mandated by the Federal Government, and that State law be amended to require each court to consider these guidelines in setting or modifying support orders.

The guidelines in the report are based on the cost of raising a child in the urban-north central region, as calculated by the U.S. Department of Agriculture. Each parent is assessed a percentage of child-raising costs according to the proportion of the combined total gross income each earns.

The commission recommends that the USDA figures be replaced by local figures for each of Ohio's counties. Determining those figures, and periodically updating them, would be the responsibility of the Division of Child Support Enforcement suggested earlier.

**Collection**

The commission recommends that all child support cases should be IV-D cases, unless the custodial parent waives the opportunity. All orders for child support should be processed through the designated county child support collection agency.

**Enforcement**

Because statistics are lacking on child support-related issues (e.g., the number of cases in the State, the amount of support owed and/or collected), the commission finds that analysis and evaluation are difficult and recommends that such data be collected by the Division of Child Support Enforcement.

The commission recommends increased funding and staffing of child support enforcement agencies to improve program performance. There is also a need for better training of child support enforcement personnel.

Before April 1, 1986, legislation should be adopted or amended to bring Ohio into compliance with the Child Support Enforcement Amendments of 1984 to ensure disposition of child support cases within the federally mandated timeframes.

All assets and sources of income to noncustodial parents should be attachable for child support. Further, execution of liens on real and personal property should be used more frequently.

The commission recommends that a study be undertaken to find remedies for the problems caused by unreported income. Studies should also be undertaken to determine the factors that cause some parents to make child support payments while others do not.

Interest should be charged on arrearages without having to reduce the arrearages to judgment. All remedies available for child support collection should be available for collection of arrearages.

The commission recommends increased emphasis on enforcement of support obligations to pay medical bills or to provide medical insurance.

The Federal Parent Locator Service should be improved and updated and should be available to all parents. To assist in the location of absent parents, the Federal Government should encourage all jurisdictions to require that Social Security numbers appear on marriage certificates and children's school registration forms. Federal and Ohio laws designed to protect individual privacy should be abrogated so that absent parents can be more easily located.

To prevent enforcement problems from arising in the first place, the commission recommends that each county offer educational programs for children and adults on a variety of topics relating to divorce and child support.

## Availability of Services

To reduce the caseload and expedite the process of obtaining and enforcing a child support order, the commission recommends that the legislature adopt a program to automatically create additional domestic relations judgeships when a county's caseload reaches a certain level. County child support agencies should find some method, perhaps through the use of flextime, to extend hours of service to the public without increasing costs.

Clients should be better informed of their rights and the remedies available to them. Parents should be responsible for notifying the IV-D agency of changes in address, job status, and other relevant matters.

Law enforcement agencies should place a higher priority on serving court papers in domestic relations cases.

## CHILD CUSTODY AND VISITATION

The commission recommends that when it is appropriate, parents should be assisted in resolving visitation problems through nonadversarial services.

Visitation orders should be vigorously enforced, and public resources and remedies equal to those used to enforce child support should be available in visitation violations.

In both custody and visitation cases, legal aid services should be available to the legally indigent.

Generally speaking, visitation orders should set out specified schedules. Noncustodial parents should have access to their children's medical, dental, school, and other records.

In domestic violence cases, consideration should be given to terminating or limiting visitation.

Federal law should be modified to allow representation in visitation, custody, and related cases as legitimate IV-D costs, and Federal support should be made available to permit public defenders to assist the growing numbers of parents who will be facing child support and visitation contempt charges as the program becomes more effective.

## INTERSTATE ENFORCEMENT

In cases under the Uniform Reciprocal Enforcement of Support Act (URESA), responding States should be forbidden to modify support orders from the initiating jurisdiction.

Interstate cases should be given the same priority as other cases. In particular, the commission recommends that jurisdictions act to hear more paternity matters within URESA proceedings.

The commission recommends that the Federal Government extend for 3 years the availability of special grant money for interstate cooperation.

## PATERNITY

The commission recommends that local child support agencies place increased emphasis on establishing paternity.

Regardless of parentage, all children should enjoy equal application of the law and equal protection under the law. Further, their parents should enjoy equal rights and responsibilities under the law.

The commission recommends that courts and child support agencies encourage the early filing of parentage action by either parent, that services preliminary to establishing support and paternity be provided to either parent prior to birth, and that the services be allowable as IV-D costs.

# Oklahoma

Jon D. Douthitt, Chairman

The Oklahoma Child Support Enforcement Commission presented its final report to Governor George Nigh on October 1, 1985. In addition to the commission's recommendations, the report contains reports of the committees set up to do the commission's work and extensive appendices.

## ADMINISTRATIVE ORGANIZATION

Oklahoma's IV-D program is administered by the Child Support Enforcement Unit (CSEU) within the State Department of Human Services (DHS). Of special concern to the commission is the fact that CSEU expenditures are lumped into the administrative section of the departmental budget, with no reference to the program's performance. Federal incentive money for support collection is absorbed into the administrative budget and does not necessarily increase the funds available to improve the program.

The commission feels that the expenditures and income of CSEU should be identified in the budget, to serve as justification of the need for increased staffing. At present, understaffing promotes inefficiency, employee burnout, and costly retraining of staff.

The need for increased staffing is underscored by the anticipated 30 percent rise in non-public assistance cases that will result from the Federal Child Support Amendments of 1984 (Public Law 98-378).

The report also notes a need for CSEU to conduct more public awareness and public education campaigns to increase the program's visibility.

## CHILD SUPPORT

### Amount of Support

Generally speaking, in Oklahoma the support obligation is established by the courts case by case, according to how the judge evaluates the family's situation. There are no objective support standards, although there is considerable evidence that formulas can improve the equity and adequacy of child support awards.

The committee assigned the task of researching objective standards examined both income-sharing and cost-sharing approaches. Each approach has its proponents and its detractors, and economists and social workers are involved in a major debate on which method is better.

The committee report sets out underlying principles that should guide the effort to develop a child support formula. The report also includes two sets of guidelines and formulas, both based on the income-sharing principle.

## Enforcement

Prior to the enactment of Public Law 98-378, Oklahoma already had in place a number of the enforcement mechanisms mandated by that law. Oklahoma's House Bill 1209, which Governor Nigh signed into law in July 1985, contains provisions for other remedies made mandatory by the Federal law.

The commission notes that the implementation of wage assignment procedures creates a special need for continual public relations efforts between the Oklahoma Department of Human Services and employers. If the program is to succeed, the cooperation of employers is essential.

The commission's committee on availability, cost, and effectiveness of services notes that incarceration is one of the most effective remedies available. It is expected that the use of incarceration will decrease, however, because of overcrowded jails and as a result of a recent court ruling requiring that indigent absent parents threatened with jail have court-appointed counsel.

Weekend incarceration and work furlough, two methods that reduce the impact of jail sentences on the absent parent's earning capacity, are useful alternatives that should be considered.

The committee also suggests that the Department of Human Services should increase its reporting of child support arrears to credit bureaus after notifying the absent parent that such reporting will occur. If the parent's location is unknown, the committee suggests that running a notice in the newspapers of the last known address be considered sufficient notification.

## CHILD CUSTODY AND VISITATION

The committee examining visitation issues notes that visitation and custody are sometimes intertwined. In extreme cases, for example, interference with visitation can result in a change of custody.

The committee finds that specific visitation schedules are preferable to vague, sometimes unenforceable orders to permit "reasonable and seasonable" visitation. The committee's report contains sample standard and expanded visitation schedules that can be used when the parents cannot agree on a schedule.

The report notes that many other custody/visitation issues should be explored in the future.

## INTERSTATE ENFORCEMENT

The commission recognizes that a court may exercise some discretion regarding the enforcement of interstate child support orders; however, the commission urges that this discretion be exercised with great restraint and caution. If Oklahoma's decrees are to be observed and enforced in courts of other States, then Oklahoma courts must reciprocate. It is the commission's perception, the report notes, that the Oklahoma child support collection system does not enjoy a strong reputation among other States.

The committee on interstate enforcement suggests that it might be good to establish a special unit within the IV-D agency to process cases under the Uniform Reciprocal Enforcement of Support Act (URESA). Some standardization of forms and procedures among jurisdictions would also be helpful.

The committee also suggests that some attention be given to improving the intrastate enforcement of cases across local boundaries.

## RECOMMENDATIONS

One of the chief recommendations made by the commission is that a permanent, expanded advisory commission on child support enforcement be appointed to continue studying the issues raised by the present commission.

### Administrative Organization

The commission recommends that a complete analysis be conducted of the breakdown in the enforcement process brought about by the lack of cooperation between public agencies and private enterprise.

The commission also recommends that the Oklahoma Department of Human Services present a proposed model budget based on the use of Federal incentive funds, justifying the use of these funds to expand the State's enforcement efforts. DHS should also reevaluate the way the CSEU budget is reported in the State budget.

### Child Support

The commission recommends that the Oklahoma Supreme Court adopt by court rule objective guidelines and standards for determining child support awards. The guidelines should be based on basic data developed by an economist, and the formula should reflect an income-sharing approach.

The commission recommends more study of such enforcement procedures as alternative methods of incarceration and increased, automated reporting of arrearages to credit bureaus. In connection with the issue of incarceration of delinquent parents, the commission recommends closer scrutiny of the need for public defenders for indigent parents and a review of present jail availability in urban areas.

The commission also recommends that periodic workshops and other forms of training should be provided for judges and attorneys in all child support-related areas. In addition, a consumer handbook is needed to inform the general public of relevant laws and procedures.

## Child Custody and Visitation

The commission recommends that all divorce decrees contain specific visitation schedules. The courts should use standard visitation schedules when the parents cannot reach an agreement.

Mediation services should be made available at low or no cost to parents prior to court hearings, and parents should be advised of the need to maintain a calendar or diary of visitation activities for reference in case mediation or legal action becomes necessary.

Definitive guidelines for enforcement of visitation orders should be developed through legislation or court rule.

## Interstate Enforcement

Oklahoma courts should refrain from modifying decrees from other States and should give such orders full faith and credit.

The State child support enforcement system should develop a more cooperative attitude toward interstate cases, in order to promote a more positive response from other jurisdictions.

The commission recommends a statewide analysis to determine the reason for the fragmentation of accountability and/or responsibility of different parts of the organizational structure.

Oklahoma should support the establishment of federally imposed, nationwide time limits for the processing of interstate cases.

The proposed new commission should investigate noncompliance by district attorneys with requests to enforce private (non-IV-D) cases sent to Oklahoma, to determine if a monitoring mechanism should be implemented or if procedural alternatives should be found.

## Legislation

Citing a need for further State and Federal legislation, the commission recommends joint cooperative efforts to develop such legislation.

# Oregon

Leonard Sytsma, Chairman

The Oregon Governor's Commission on Child Support Enforcement was formed by executive order in response to the Child Support Enforcement Amendments of 1984 (Public Law 98-378). The commission held public hearings in various cities in 1985 to receive testimony on child support issues and concerns. A final report issued in October 1985 summarizes the commission's findings and recommendations.

## ADMINISTRATIVE AND JUDICIAL ORGANIZATION

The Oregon Department of Human Resources (DHR) is the State's IV-D agency. DHR has assigned the administration of the child support enforcement program to the Adult and Family Services Division (AFS); the program director is an assistant administrator of AFS.

Under a contract with DHR, the Support Enforcement Division (SED) of the State Justice Department is responsible for child support enforcement in cases involving public assistance. In nonwelfare cases, district attorneys are responsible for enforcing child support. Beginning October 1, 1985, each county is required by law to enter into a written agreement with DHR to establish paternity, establish child support orders, and enforce child support orders.

Records, including payment histories for all IV-D cases, are maintained by the AFS Child Support Program. Payments are made to the Child Support Program, which then either distributes the money to the custodial parent or applies the sum to offset public assistance costs.

Support orders may be established administratively or judicially. Judicially established orders are entered by the circuit court. Until 1985, only the judicial process was open to a nonwelfare family seeking help in establishing an order. Recent legislation extended the availability of the administrative process, formerly available only to families on public assistance, to families not receiving such assistance.

In the administrative process, a notice is served upon the obligor. That parent may then sign a consent order or request a hearing, which is conducted by an Employment Division hearing officer. If the hearing officer's decision is appealed, the case is turned over to the circuit court, which must hear the case from the beginning. If the notice is ignored, a default order may be taken 20 days after service unless paternity is involved.

If paternity is involved, a default may be taken 30 days after service of the notice. If a hearing is requested in cases involving paternity, the entire matter is turned over to circuit court for trial.

## CHILD SUPPORT

### Amount of Support

An order for payment of child support is based upon the premise that both parents are obligated to support their children within their capacity to do so. There is no precise formula for determining the amount of support, although the Support Enforcement Division does have a scale and formula to use as a guideline in administrative cases. For judicial cases, a 1981 decision (Smith v. Smith) is case law in relation to determining the proportion of support that each parent will provide. In many court cases, however, the Smith v. Smith guidelines are not appropriate.

The amount of support awarded by the courts varies greatly from case to case and court to court, even for families with similar circumstances. The problem is compounded by the practice in some courts of assigning judges to domestic relations cases on a rotation basis, so that more than one judge may be involved in the same case. Further, the judge who hears a case may have no particular expertise or interest in domestic relations issues.

### Modification of Support Orders

If circumstances change substantially after a support order is established, the custodial parent, the noncustodial parent, or, in public assistance cases, the State, may petition for a modification. Orders established administratively may be modified administratively; orders established by the court can be modified only by the court. SED and district attorneys have the authority to obtain a modification of a court order if the custodial parent requests it, but they are not required to do so. Noncustodial parents who want to modify a court order generally have to obtain private counsel -- sometimes a prohibitively expensive undertaking.

### Enforcement

In 1985, Oregon passed legislation (Chapter 671, Oregon Laws 1985) to bring the State into compliance with the requirements of Public Law 98-378. At present, the State has a number of methods to enforce child support orders. In addition to those available before 1975 -- contempt of court, attachment of personal property, execution of liens on real property, and criminal nonsupport -- a number of newer methods are now in use, including:

o **Wage withholding**, the most commonly used method. Under the new law, wage withholding orders are administratively established by DHR's child support program. The commission report notes two problems with this method: not all obligors are employed; and the obligor's employer cannot always be found, or found quickly. The State child support program is establishing a process to ask custodial parents periodically to provide any information they may have concerning the noncustodial parent's employment.

- **State tax and Homeowners and Renters Relief Payments intercept**, newly extended to families not on public assistance.
- **Internal Revenue Service intercept.**
- **Judgment debtor examinations**, both judicial and administrative. The delinquent parent can be compelled to appear either in court or out of court (usually at the SED office) to be examined regarding assets and ability to pay support.
- **Liens on personal property.** This is not expected to be widely used or effective in most cases. The lien applies only to the owner of the property and cannot be enforced against any subsequent purchaser.
- **Uniform Reciprocal Enforcement of Support Act (URESA).** URESA enforcement is discussed later in this summary.
- **Interstate income withholding.** Oregon's new law contains a provision whereby an out-of-State income-withholding order can be registered in Oregon so that the obligor's earnings in Oregon can be reached.

## CHILD CUSTODY

None of the possible forms of custody -- sole legal and physical custody for one parent, joint legal custody, or joint legal and physical custody -- is without potential drawbacks.

While some studies indicate that child support is paid more consistently when parents are granted joint custody, the commission was unable to establish a clear cause-and-effect relationship between joint custody and payment of support. In any case, Oregon case law restricts a court's ability to order joint custody if either parent objects.

Another consideration is that awarding joint legal or physical custody could possibly affect a child's ability to qualify for public assistance.

## VISITATION

Administratively established child support orders do not deal with visitation. At present, establishment and enforcement of visitation provisions are up to the courts. A noncustodial parent seeking to exercise visitation rights receives none of the help available to a parent seeking to enforce a support order. The absent parent must take the matter to court, often at considerable expense.

Enforcement is difficult and frequently ineffective. The primary mechanism currently used is contempt proceedings for failure to comply with the court order.

Visitation and the requirement to pay child support are most often considered separate issues. In certain cases, however, courts can and do relate the two issues.

## INTERSTATE ENFORCEMENT

In Oregon, URESA cases referred by other States for enforcement all go first to SED. If the case involves recipients of public assistance, SED staff will handle it. Other cases are referred to the appropriate district attorney. Until October 1, 1985, there was no enforceable requirement that district attorneys aggressively enforce child support, and the level of response has varied from county to county. Similarly, some States or counties outside Oregon are more responsive than others to requests for enforcement.

The major problems the commission found in relation to interstate enforcement are lack of speedy action, poor communication between States, and failure of States or jurisdictions to provide needed services. Many jurisdictions, for example, will not accept a URESA paternity case; some responding States will pay costs of necessary tests to establish paternity and others will not. In addition, some States will not enforce arrearages, or will alter the amount.

## PATERNITY

District attorneys are responsible for establishing paternity for children not involved with public assistance, when the parent with physical custody of the child requests such services.

In cases involving public assistance, the establishment of paternity is the responsibility of SED. Assisting in establishing paternity is a condition of eligibility for individuals applying for Aid to Dependent Children, unless the mother can show good cause for refusing to help identify the father.

Beginning October 1, 1985, paternity may be established by administrative action, either through SED or the district attorney.

## RECOMMENDATIONS

In addition to the recommendations summarized below, the commission report contains a number of minority recommendations, generally made by the member representing noncustodial parents.

### Child Support

The commission recommends that there be a program to train judges, other court personnel, and Employment Division hearing officers in determining appropriate child support amounts. Further, the legislature should provide a process to establish and update objective guidelines for child support.

To provide greater access to the courts, State laws should be amended to include a form of petition that would allow either parent, in simple, precise language and without an attorney, to petition for modification of a support order.

## Custody

The commission recommends that when custody is an issue, custody decisions should remain a court action. State law should be amended to make it clear that the court can order joint custody over a parent's objection.

Federal law or regulations should be amended as necessary to provide that a child will not be denied public assistance solely because the parents share joint legal or physical custody.

## Visitation

When parents can agree on visitation provisions, the provisions should be included in administratively established child support orders.

Visitation and child support should be treated as separate issues, and visitation rights should, as a policy, be enforced with the same vigor as child support.

State law should provide a simple form that would allow noncustodial parents to petition the court, without an attorney, for a change in visitation provisions.

## Interstate Enforcement

The commission recommends that the Federal Government:

- require all States to accept another State's certification of a family's need for child support as prima facie evidence of such need, with appropriate documentation
- require that all States act to establish paternity and to establish and enforce child support orders in interstate cases with the same vigor and priority accorded intrastate cases; monetary penalties should be levied against States that do not comply
- clearly assign the costs of genetic tests to the initiating State
- require all States to accept a probability of paternity of 97 percent or higher based on genetic testing as a rebuttable presumption of paternity
- make an effort, with the States' assistance, to create a single standardized form for interstate petitions

## Paternity

The child support enforcement program should participate in paternity testing only when needed to obtain a support order.

The use of genetic tests to establish paternity should not be increased, as the commission feels the costs outweigh the benefits.

## Puerto Rico

Carmen Sonia Zayas, Chairperson

Puerto Rico's Commission on Child Support was created in January 1985 by executive order of Governor Carlos Romero Barcelo. In the course of its work, the 11-member commission reviewed numerous legislative and analytical reports and interviewed individuals involved in various ways with the child support enforcement system: judges, attorneys, government employees, and custodial and noncustodial parents.

The commission presented its final report to the Governor in September 1985.

### ADMINISTRATIVE AND JUDICIAL ORGANIZATION

The Child Support Enforcement Program is located in Puerto Rico's Department of Social Services. The program operates through four divisions:

- The **Case Analysis** division receives, reports, and analyzes cases and refers them to the appropriate division for action.
- The **Parent Location** division works to identify and locate absent parents using information sources from Puerto Rico and the United States.
- The **Legal Coordination** division takes support enforcement cases before the courts. Because of the high volume of cases, the program awards contracts to private attorneys to represent program clients. Much of this division's work is done through a cooperative agreement with the Commonwealth's Department of Justice.
- The **Collection and Distribution of Payments** division receives, reports, and distributes all support paid through the Child Support Enforcement Program. Payments are channeled to this division by the Office of Courts Administration, which handles collections in interstate cases as well as the non-AFDC caseload, and carries out other duties through cooperative agreement.

At the time the commission prepared its report, the program was dealing with 62,318 active cases of children receiving public assistance (AFDC) and 59,152 non-AFDC cases. In 1984, $85 million was collected through the Office of Courts Administration and the child support program.[1]

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[1] The figures shown in the Commission report were corrected per Puerto Rico's OCSE-3 reporting.

Projected automation of case management should allow program staff to handle the increased caseload expected as a result of the department's planned campaign to publicize its services.

Judicial delays pose problems for families dependent on support payments. Puerto Rico currently lacks an administrative or quasi-judicial procedure to expedite processing of child support cases, although legislation passed in July 1985 sets time limits for the handling of such cases.

## CHILD SUPPORT

### Amount of Support

In establishing support obligations, the Child Support Enforcement Program uses guidelines designed to provide equal treatment to all families. Once the Department of Social Services and the parents reach an agreement on the amount of support, the department petitions the court to validate the agreement. In dealing with other cases, the courts lack uniform guidelines and rely instead on judicial discretion.

Puerto Rican law recognizes two types of child support obligations. One is a permanent obligation to provide for the basic physical needs of the child, such as food and clothing, regardless of the child's age. The second is a temporary obligation to provide for needs related to intellectual development or education. Such a temporary obligation generally ends when the child reaches the age of majority (21 in Puerto Rico).

The commission's report notes the desirability of some means of automatically increasing the amount of child support to keep pace with inflation. Such indexing would not affect the right of either parent to request a reduction or an increase in support payments.

### Enforcement

Legislation passed in July 1985 contains provisions that strengthen mechanisms for enforcing child support orders. Among other provisions, the new law provides for:

- reporting child support arrears to consumer credit agencies
- intercepting State and Federal income tax refunds
- voluntary or involuntary wage withholding
- garnishing any source of a delinquent parent's income

The law also contains provisions to facilitate the handling of interstate cases.

## PATERNITY

Since 1963, Puerto Rican law has recognized that all children, regardless of their birth date or the civil status of their parents, have the right to be acknowledged for all legal purposes, including child support. There is at present no conceptual difference between filiation and paternity.

## RECOMMENDATIONS

### Administrative and Judicial Organization

The commission recommends that an efficient system be designed and implemented to compile data on child support generated by the Commonwealth's Department of Justice, the Office of Courts Administration, and the Program on Child Support.

The current campaign to publicize available services should be maintained and strengthened.

The desirability of creating a quasi-judicial system to relieve superior family court judges of some of their functions should be examined.

There should be continued dialogue between the Secretary of Social Services and family court judges to determine and correct flaws in current support procedures.

### Child Support

The commission recommends that in all divorce suits where minors are involved, the Social Security numbers of the parties should be included to make it easier to locate the obligated parent, if necessary, to enforce support.

Uniform guidelines should be developed for use by the courts in setting support awards.

Support orders should include an "escalation clause" to modify child support to reflect changes in the cost of living.

The commission recommends that noncustodial parents be encouraged to authorize voluntary withholding from wages or other income to meet support obligations.

The commission suggests that the effects of child support-related legislation passed in 1985 be monitored and that the law be amended if necessary.

# Rhode Island

David Carlin, Chairman

The "Final Report of the Special Legislative Commission To Study Child Support Enforcement Procedures and Remedies in Rhode Island" was completed in February 1984 -- before the passage of the Federal Child Support Enforcement Amendments in August of that year. The report was accepted in fulfillment of the requirements of the Federal statute.

## DISCUSSION

The commission report cites 1978 statistics that show that over half of noncustodial parents in Rhode Island were in partial or total noncompliance with court-ordered child support payments.

Three groups may be characterized as victims of noncompliance: custodial parents, the great majority of them women; children, who suffer emotionally and financially; and taxpayers, who pay welfare costs. Nonpayment costs Rhode Island's taxpayers about $5 million a year, in spite of increased collections by the Department of Social and Rehabilitative Services' Bureau of Family Support.

The commission had two guiding principles:

1. The State has a compelling interest in the well-being of children -- an interest that is sufficient to justify strict procedures and sanctions for nonpayment of child support.
2. Noncompliance is primarily a moral and cultural problem, and only secondarily a law enforcement problem. Therefore, one must not expect too much from statutory changes. The effects of such changes are likely to be marginal, but real -- especially to individuals.

In considering possible legislative measures, the commission targeted only the "easiest" cases -- cases in which the father is known, lives in Rhode Island, has sufficient income, and has been ordered by the court to pay child support.

## RECOMMENDATIONS

### Legislative

Rhode Island was one of the first States to permit garnishment of wages for nonpayment of child support. The commission recommends broadening the law to include all income sources (e.g., interest, dividends, pensions). They also suggest a streamlined process so that garnishment goes into effect 14 days after an application is filed.

Mandatory withholding of child support payments from wages should begin when the child support order is entered, rather than after a finding of noncompliance is made.

Credit bureaus should be required to take into consideration child support obligations and delinquencies.

The court should impose a mandatory 12 percent interest on arrearages. The court should also have authority to assign and transfer the noncustodial parent's personal property in order to satisfy arrearages.

Family court should be permitted to imprison noncustodial parents found to be in contempt. The court should then order work-release immediately, so that the parent's earning power is affected as little as possible.

Employers should not be permitted to prohibit service of court papers to noncustodial parents at work.

Department of Social and Rehabilitative Services rulings authorizing income tax intercepts should be appealable to family court, which has the records, not to the superior court.

Unless continuance of a court hearing is mutually agreeable, the party requesting continuance should compensate the other party for lost wages.

Bureau of Family Support constables should be given temporary arrest powers to execute body attachments (arrest warrants) in child support cases.

The State legislature should create a special, 3-year legislative commission to report annually to the general assembly on child support problems and to make recommendations for resolving them.

### Nonlegislative

In addition to its legislative recommendations, the commission offers suggestions for actions in other areas. For example, they encourage the formation of support and advocacy groups by and for custodial parents. The commission also recommends that the Bureau of Family Services establish advocacy committees of people who have been through the system to help sensitize its employees to their clients' problems.

# South Carolina

James L. Solomon, Jr., Chairperson

Governor Richard W. Riley established the South Carolina Commission on Child Support through executive order on November 26, 1984. Two subcommittees examined issues related to legislation, staffing and funding; and specific issues affecting the child support enforcement delivery system.

The commission presented its report to Governor Riley on October 1, 1985, but the commission's work extends beyond that date. By January 1, 1986, the commission is expected to make a recommendation regarding its continuation.

## ADMINISTRATIVE AND JUDICIAL ORGANIZATION

Recent reorganization created the Office of Child Support Enforcement, an agency directly responsible to the State Commissioner of Social Services. Further reorganization transferred all IV-D staff to the Department of Social Services (DSS), with the legal component supervised by the Chief Deputy Attorney General. The legal component had been part of the Office of the Attorney General. Along with this restructuring, the child support enforcement program was officially recognized as one of DSS's five major goals.

Since 1976, a uniform statewide family court system has had jurisdiction over all matters involving domestic or family relations. Each of the State's 16 judicial circuits has at least two family court judges. In addition, each county has a popularly elected clerk of court who serves both the circuit and the family court.

The need for automation has been addressed by the application for and approval of Federal matching funds to develop a statewide automated system.

## CHILD SUPPORT

Aid to Families with Dependent Children (AFDC) cases make up approximately 80 percent of the child support enforcement program's total caseload. The commission cites disparity in awards and growing evidence to suggest that support awards at their current levels are inadequate.

### Collection

Streamlined procedures have been instituted for non-AFDC cases. Formerly, clerks of court collected the money but the State IV-D agency distributed it. Currently, clerks of court make direct distribution.

The legislature passed a wage withholding bill, which is scheduled to take effect October 1, 1985. Withholding is triggered by arrearage equal to 1 month's support obligation.

### Enforcement

The State is attempting to comply with Federal mandates regarding expedited process for obtaining and enforcing support orders. A 1983 order from the State Supreme Court requires that all domestic relations cases in family court be disposed within 180 days from filing the initial petition (except in exceptional circumstances). The State is collecting data by county to reflect the speed of processing cases. On the basis of the results, the commission will make a recommendation by January 1, 1986, whether to seek an exemption or propose implementing legislation.

A scheduled payment is considered missed if payment is not received 5 working days after the scheduled due date. The clerk of court is then required to issue a rule to show cause directing the party in arrears to appear in court.

## INTERSTATE ENFORCEMENT

The State legislature recently passed a bill establishing a system for wage withholding for support or paying arrearages to support a child, spouse, or former spouse as ordered by a court or agency of another jurisdiction.

## RECOMMENDATIONS

### Child Support

The commission advocates that a multidisciplinary effort be undertaken to devise child support award guidelines. Such an effort should examine other States' guidelines in addition to considering aspects peculiar to South Carolina.

### Visitation

A subcommittee will further study problems presented by visitation interference.

# South Dakota

Linda Lea M. Viken, Chair

The South Dakota Commission on Child Support, created by Governor William Janklow, was charged with making recommendations to the Governor regarding the steps necessary to bring the State into compliance with Public Law 98-378, the Child Support Enforcement Amendments of 1984.

In addition to its regular meetings, the commission held one public hearing to receive comments and attended meetings of other groups to present its proposals. The commission also worked with the Interim Judiciary Committee of the South Dakota Legislature, which reviewed the commission's proposed legislation and recommended changes that the commission adopted.

The commission presented its final report to Governor Janklow in December 1985.

## ADMINISTRATIVE AND JUDICIAL ORGANIZATION

The South Dakota Office of Child Support Enforcement (OCSE), within the Department of Social Services, is the State's IV-D agency. Not all child support matters are centralized within OCSE, however. A myriad of people and agencies may be involved: State's attorneys, private attorneys, clerks of court, the judiciary, OCSE, and others. This fragmentation results in a lack of uniform procedures, delays, and excessive costs.

Currently, the Department of Social Services may establish a support obligation by administrative procedures only for recipients of Aid to Dependent Children (ADC). Non-ADC recipients are denied this expedited process and must obtain child support orders through the courts.

## CHILD SUPPORT

### Amount of Support

The lack of uniform support guidelines in the State has led to substantial variations in the amount of support ordered for families in similar situations. The amount of the award often varies depending on the method used to determine the support obligation.

In considering the issue of establishing guidelines, the commission reviewed many sources of economic data on the cost of raising a child and factors that may be included in determining a support obligation. The commission also reviewed guidelines used in other States.

The commission rejected the use of guidelines that consider the income of both parents in setting support awards. Except in rare cases, the income of the custodial parent should not be a determining factor, because that parent already makes a significant contribution to the child's basic care.

The guidelines recommended by the commission are included in proposed legislation to be considered in 1986. They are discussed further in the "Recommendations" section of this summary.

The commission report notes that there is no simple method presently available to modify support obligations.

## Enforcement

Public Law 98-378 requires that States use certain proven enforcement methods to collect child support. Present South Dakota law does not provide for all these techniques -- for example, imposing liens against property, requiring security to guarantee payment, and making information on support delinquencies available to credit reporting agencies. The 1984 Child Support Enforcement Amendments also contain specific provisions with respect to income withholding, and State law is not always in conformity with those provisions.

The Department of Social Services currently issues withhold-and-deliver orders to collect child support from absent parents in both ADC and non-ADC cases. These orders to withhold and deliver generally direct the absent parent's employer to withhold a certain amount from earnings; the department also issues some orders against an absent parent's bank account or unemployment insurance benefits.

The orders to withhold and deliver are sent to the absent parent and to the employer on the same date. Although the absent parent can request a hearing to contest the order, the order is not stayed pending the hearing. The commission feels this may violate due process requirements. If the employer or other recipient does not comply with the order to withhold and deliver, he is liable for the amount of the support debt to be withheld.

South Dakota has a special problem in trying to collect child support from residents of Indian reservations. The collection rate from those parents is a dismal 2.64 percent. Under a previous agreement, the tribes kept a portion of the support they collected as an incentive payment. The Federal Government, however, informed the State that the tribes could not withhold funds but would have to be reimbursed. That arrangement was not acceptable to the tribes.

## VISITATION

The commission report notes that although visitation problems are not directly related to child support, such problems appear to affect, and to be affected by, child support payments. From a legal standpoint, however, the matters are separate and distinct.

Administrative child support orders do not deal with visitation problems, which must be resolved through the courts.

## RECOMMENDATIONS

The recommendations included in the commission report have the unanimous support of the commission. Most recommendations are embodied in the commission's proposed legislation, which will be taken up by the State legislature in 1986.

### Administrative and Judicial Organization

The commission recommends that the administration of child support enforcement services be centralized within the Department of Social Services. The services to be provided should include expedited administrative procedures for establishing support obligations if no previous support order exists, income withholding for the enforcement of support orders, and modification of existing child support orders at the request of either parent, except in cases where the support order was entered by a court after trial. All services, including expedited administrative process, should be equally available to ADC and non-ADC recipients.

The administrative process will not decide paternity issues. If paternity is an issue, it must be decided by the circuit court. After paternity has been established, the court will enter a support order consistent with recommended guidelines. Visitation issues must also be taken to court.

### Child Support

The proposed legislation contains guidelines for the administrative agency and the courts to use in setting support obligations.

The primary factor in establishing the amount of support is the noncustodial parent's gross income minus certain deductions (income and Social Security taxes, medical or dental insurance for dependents, mandatory retirement contributions, unreimbursable business expenses, and payments on other child support orders). The income of the custodial parent is not considered.

The schedule of payments included in the proposed guidelines reflects the fact that the cost per child decreases as the number of children in the household increases. The schedule establishes a minimum obligation even for noncustodial parents with very low incomes, regardless of their current ability to pay.

The court or administrative agency may deviate from the guidelines only in specific circumstances, may require periodic adjustments in support amounts, and may modify existing orders in accordance with the guidelines.

The draft legislation makes certain changes in procedures for income withholding. To provide due process, the absent parent will receive advance notice of withholding orders and will have 10 days to contest the action. The only basis for objection is a mistake of fact as to the amount of the delinquency or the identity of the absent parent.

An employer's failure to comply with a withholding order will be a petty offense, and the employer will be subject to a fine.

In addition, the employer is responsible for the sums not paid under the order.

The commission's proposed legislation also provides for the use of other enforcement techniques not included in current law (e.g., liens on real property, reporting to credit agencies).

The commission recommends that the Governor take appropriate steps to establish a better working relationship with Indian tribes in order to increase child support collections.

## Visitation

The commission's proposed legislation does not deal with visitation issues. The commission, however, endorses mandatory mediation of visitation and custody problems, both before and after divorce. Mediation services would be provided on a sliding fee scale. The commission recommends that consideration be given to funding these services by increasing filing fees for divorces.

## Interstate Enforcement

In light of the fact that South Dakota responds more quickly than most States, the commission feels that present procedures are working well and recommends no changes in the State's Uniform Reciprocal Enforcement of Support Act.

## Paternity

The proposed legislation permits the establishment of paternity at any time before the child's 18th birthday for all children born after July 1, 1968.

## Public Awareness

The commission recommends that the Department of Social Services develop an extensive information campaign to increase public awareness of the responsibilities of parents and the assistance available for child support enforcement. The commission also sees a need to teach children the rights, obligations, and responsibilities of parenthood.

# Tennessee

Kenneth Turner, Chairman

The Tennessee Child Support Commission met eight times as a body and several more times in its four subcommittees. Those subcommittees were organized around issues of legislation and issues pertinent to middle Tennessee, eastern Tennessee, and western Tennessee.

In October 1985, the commission presented a report on its year's work to Governor Lamar Alexander.

## ADMINISTRATIVE AND JUDICIAL ORGANIZATION

The Department of Human Services (DHS) is the State's IV-D agency. The department operates the child support program through contracts across the State. Enforcement and paternity services are contracted for; in most areas of the State, DHS contracts with the district attorney's office for these services. Child support orders may be filed in circuit, chancery, or juvenile court.

## CHILD SUPPORT

### Amount of Support

The lack of recommended guidelines for support results in widely disparate awards. Currently, the child support program is petitioning the courts to award medical support as well as financial support in all proceedings.

### Enforcement

In 1981, the State enacted a discretionary wage assignment law that allowed courts to issue wage assignments against obligors. New legislation has made the assignment automatic.

## RECOMMENDATIONS

### Administrative and Judicial Organization

Full-time referees should hear child support cases in all jurisdictions where the caseload justifies it. The Department of Human Services should emphasize interdepartmental training and education regarding the programs available and the need for cooperation in considering the impact of child support on cases of abuse and neglect. The State should explore possible consolidation and integration of support services within DHS and throughout State government. Increased computer file matching of all State and Federal governmental records would help to locate parents and their assets.

## Child Support

State law and/or Tennessee Department of Insurance regulations should be changed so that all health insurance policies issued in the State cover all legal minor dependents of any insured who chooses family coverage, regardless of residence issues.

Other changes should provide for custodial parents to file claim forms for children insured under noncustodial parents' policies. Direct payment should be made for out-of-pocket expenses.

## Visitation

Statutory language should state that the best interests of children must consider physical, emotional, psychological, educational, and financial rights of the child. Visitation and child support payments should continue as separate issues.

## Interstate Enforcement

The Uniform Reciprocal Enforcement of Support Act (URESA) statute should be changed to ensure that judges may order payment of medical bills and/or medical insurance regardless of the foreign order's content.

Federal legislation should specify uniform procedures for interstate enforcement of income/wage assignments for support collections. Improved State and Federal parent locator services should be used.

## Legislation

Federal Social Security law and/or regulations should be changed to prohibit reduction of a natural child's portion of Social Security payments to provide payments to stepchildren. Social Security laws and regulations should also be changed to provide for using Social Security numbers for identification in all child support actions.

Federal legislation should state that a child's income should not be allocated to other family members, and applicants for Aid to Families with Dependent Children (AFDC) should be allowed to exclude from the AFDC aid group any child they desire.

Federal legislation and regulations should be changed to allow for enforcement of child support obligations against Social Security disability benefits, Veterans' Administration disability and education benefits, National Guard and military reserve pay, and any other government payments.

Finally, Federal legislation reducing incentives on AFDC cases and capping incentives for non-AFDC cases should be revised.

## Extended Life of Commission

The child support commission should be reappointed for another year to monitor the effectiveness of the Tennessee Child Support Enforcement Amendments of 1985, make recommendations for change, and complete its study on child support award guidelines.

# Texas

Enrique H. Pena, Chairman

In November 1984, Governor Mark White created the Texas State Commission on Child Support to study the operations of the State's child support system and to examine related problems. In carrying out its mandate, the commission held a series of public hearings. The commission also reviewed legislation, statistical reports, program procedures, and the results of various studies.

In addition, the commission appointed subcommittees to address visitation, mediation, and custody; standards of support; interstate obligations; services for welfare and nonwelfare recipients; and paternity. The subcommittees were responsible for developing recommendations for improving the State child support enforcement system.

The final report representing the findings and conclusions drawn from the commission's hearings and deliberations was submitted to the Governor in November 1985.

## ADMINISTRATIVE AND JUDICIAL ORGANIZATION

### Administration

Since 1983, the Texas Child Support Enforcement (IV-D) Program has been housed within the Office of the Attorney General. When a family applies for and receives public assistance under the Aid to Families with Dependent Children (AFDC) program, the Department of Human Resources makes a referral to the Child Support Enforcement Program.

The referral process is currently a manual one that takes approximately 30 to 60 days to complete. Since the client is required to fill out the applications, the information is often incomplete, resulting in further delay in enforcing or establishing child support. The commission report notes a need for an automated referral system providing accurate information.

The Department of Human Services remains the designated information agency for cases under the Uniform Reciprocal Enforcement of Support Act (URESA). This separation has resulted in confusion for other States in exchanging information on URESA cases, duplication of functions, and difficulty in the referral and identification of IV-D cases.

### Expedited Process

Federal law requires States to create an expedited process to establish and enforce child support obligations. In some States, the process is also used to establish paternity. The expedited process may be either purely administrative or quasi-judicial.

Clearly, the report says, some alternative to the regular court system is needed to reduce delays caused by the burgeoning number of cases. The commission, however, does not recommend any specific process. New enforcement mechanisms mandated by the 1984 Child Support Enforcement Amendments may reduce the number of court cases, thus reducing the need to spend large amounts of money for masters or administrative hearing officers statewide.

## CHILD SUPPORT

### Amount of Support

The Texas Family Code requires the State Supreme Court to adopt guidelines for use in setting child support awards. In its deliberations on what method to recommend to the Supreme Court, the commission discussed both cost-sharing and income-sharing formulas.

Noting that several authors have shown there is no such thing as the average cost of rearing a child, the commission focused on income-sharing formulas. The principle of income sharing is based on the idea that children, who had no part in the marital dissolution, should continue to profit from the noncustodial parent's income.

The formula selected by the commission is a variation of the Melson formula used in Delaware. To the extent possible, the Texas guidelines eliminate manual calculations, relying instead on extensive tables for number of children and amount of obligor's net income. Essentially, to use the guidelines, the court or administrative agency determines all earnings that accrue to each parent, calculates disposable earnings for each, and refers to the appropriate table. An appendix to the commission's report spells out in some detail the working of the formula, which also allows for consideration of special circumstances.

As a rebuttable presumption, the report notes, the formula should be used to set the amount of child support unless a party can demonstrate that its use would be inequitable, or unless the court or administrative agency so determines. Any departure from the formula should be explained in writing.

Guidelines can also be used to assess the adequacy of negotiated child support settlements and to modify existing orders. The commission felt that the formula should be structured to encourage medical support. Guidelines should also take into account child care needs and attendant tax consequences. Finally, for AFDC families, the child support order should be set at the highest level the noncustodial parent is capable of paying, while taking into account the family's level of need in regard to the AFDC payment. The payment should not be just enough to render the family ineligible for welfare but not enough to take care of the children's medical needs, for example.

### Collection and Enforcement

Proposed State legislation allows for all collections made in IV-D cases to be sent through a central registry in the Attorney

General's Office. The legislation also permits judges to use the central registry for non-IV-D cases.

The computerized central registry system will operate in conjunction with the State treasury's rapid deposit system to track payments and transfer the collection to the custodial family or to the State treasury to defray AFDC costs. The automated system is being funded 90 percent by the Federal Government.

Presently, each of the 254 counties in Texas maintains an independent registry, and most are manually operated. Each county system is unique, and the systems operate with varying degrees of efficiency. The counties will have to bear the cost of automating their manual systems.

Automation will assist in enforcing child support obligations by enabling quick identification of delinquencies. Before obligations can be enforced, however, the whereabouts of noncustodial parents must be known. Pertinent information may be available through the Texas Crime Information Center (TCIC) computer and the National Crime Information Center (NCIC) computer. Both of these computer networks have been used successfully in counties where the child support program has been contracted out in the past. Because the Attorney General's Child Support Enforcement Program is not currently designated a law enforcement agency, the networks are not available for its use.

## CHILD CUSTODY AND MEDIATION

It was the sense of the commission that joint custody is generally in the best interest of children in both temporary and final orders where there are two caring, competent, and potentially cooperative parents.

The subcommittee on custody also considered the merits of mediation. Research shows that costs were lower for divorcing couples who chose mediation than for those that did not. The commission suggests that mediation is preferable to litigation in family law matters involving children.

## VISITATION

The commission report notes that while it is unclear whether improved visitation enforcement will enhance compliance with support orders, the need to improve such enforcement may stand alone. Noncustodial parent groups argue that the most commonly available remedies for visitation interference are ineffective, and they urge that visitation rights be enforced at public expense, in the same way that child support obligations are enforced.

Visitation interference includes a wide range of problems, ranging from refusal to allow the noncustodial parent to see the children to failure of the noncustodial parent to visit.

To be most meaningful, the commission believes, visitation should permit normal parent-child interaction. Thus, visitation should not always consist of weekend and vacation visits but should allow the child to see the noncustodial parent's everyday life. Conversely, the visitation schedule should leave some weekend "play" time with the custodial parent.

Federal law currently provides for the use of the Federal Parent Locator Service to locate parents charged with parental kidnapping and parents going through child custody disputes. Unfortunately, Federal law does not allow State parent locator services to be used for this purpose. The information on the Federal level is often old and has not resulted in a high success rate.

## INTERSTATE ENFORCEMENT

In addition to the problems caused by the separation of the IV-D agency and the URESA information agency in Texas, there is a general lack of knowledge in the legal community with regard to URESA law. Lack of standard procedures and forms from State to State also causes difficulties. The Federal Office of Child Support Enforcement (OCSE) has established a national committee to investigate standardization of pleadings and procedures.

## PATERNITY

The Texas child support program has one of the largest paternity caseloads in the Nation. The problem in Texas centers around the lack of laboratories that will perform the required blood testing at a reasonable cost.

Some labs perform multistage blood testing, while others provide a more limited service. The foremost consideration is whether the lab performs a sufficiently detailed series of tests to exclude most wrongfully accused men.

A major issue in Texas is the establishment of paternity in interstate cases. A number of factors -- especially the State's relatively strong economic climate -- cause a high immigration of noncustodial parents to Texas. If the father leaves behind an unlegitimated child, the States must cooperate in establishing paternity. The report mentions three problems in this process:

- maintaining the chain of evidence in the blood testing procedure
- obtaining voluntary legitimation of a child the father may never have seen
- determining which State should bear the cost of blood testing

## RECOMMENDATIONS

### Administrative and Judicial Organization

The commission recommends that the Office of the Attorney General be designated the State's URESA information agency.

The commission urges the Attorney General and the Commissioner of the Department of Human Resources to work together to develop an automated referral process to improve services to AFDC clients.

Implementation of an expedited process should be delayed in order to determine the impact of new enforcement tools on the court system. In order to determine whether further steps are necessary, the Office of Court Administration should require district courts and other courts handling child support and related cases to keep a record of the number of cases of specific types they adjudicate.

## Child Support

The commission recommends that the Texas model of the Melson formula be submitted to the State Supreme Court for possible adoption as support guidelines.

The legislature should designate to the State's IV-D program a law enforcement agency for the purpose of granting access to NCIC and TCIC computers, with whatever restrictions the legislature deems necessary.

## Child Custody and Mediation

In addition to endorsing joint custody, the commission also endorses legislation to introduce and expand mediation and recommends that the effects of such legislation in Texas and elsewhere be monitored for 2 years.

## Visitation

The commission recommends several measures to strengthen enforcement of visitation rights. Among these are:

1. Amend State rules of civil procedure to include appointment of an attorney for modification of decrees where visitation rights are unenforceable because of vague language.
2. Amend Federal regulations to allow access to State parent locator services for visitation problems and to allow domestic relations agencies to receive Federal funding to handle visitation complaints.
3. Amend the Texas Family Code to allow court modification of the custody decree if the custodial parent moves the child out of the jurisdiction without notice.
4. Provide for an upward modification of support (not to exceed 10 percent) if the noncustodial parent habitually fails to exercise visitation rights.
5. Enact legislation granting courts the authority to order compensatory visitation in cases where court-ordered visitation has been willfully denied.

The commission also recommends the publication of an information booklet describing available remedies. Finally, the commission recommends that the State legislature authorize the Supreme Court to adopt by court rule guidelines for possession of and access to children.

## Interstate Enforcement

The commission encourages the family law section of the State bar to make specific URESA training available to attorneys as part of their regular training program.

The commission recommends that progress of the national committee on standardizing URESA procedures be assessed and the implementation of the committee's recommendations be considered.

## Paternity

The commission recommends that three-tiered blood tests be mandated in all cases.

The legislature should require those charged with completing birth certificates to use their best efforts to ensure that each birth certificate contains the names, Social Security numbers, date of birth, and signatures of both parents, whether married or unmarried.

The Texas Education Agency should provide the means to teach all teenagers the responsibilities of parenthood, especially the consequences of parenthood as minors.

The commission recommends that the Federal OCSE designate official laboratories, so that initiating and responding States can deal with the same lab, thus maintaining the integrity of the blood testing procedure. The initiating State should be required to bear the cost of blood testing in interstate cases.

The costs and benefits of video-teleconferencing in interstate cases should be investigated. The ability of the father to see his child may result in more voluntary legitimations.

# Utah

The requirement of Public Law 98-378 (the Child Support Enforcement Amendments of 1984) to establish a child support commission was waived for the State of Utah. Accordingly, no report was submitted to the Federal Office of Child Support Enforcement. Instead, the director of Utah's IV-D agency, the Bureau of Child Support Services of the Department of Social Services, wrote a letter commenting on certain aspects of the new law.

The overall response to the amendments is quite positive. The letter expresses concern, however, about the requirement to post security bonds to guarantee that support payments will be made. The fear is that bonding companies will not risk underwriting child support obligations. Correspondence with other States thought to be using this method revealed that it was unsuccessful.

The letter also points out the inherent risks of enacting legislation that affects child support programs. Proposed bills are sometimes changed in the political process to such an extent that they actually adversely affect existing programs. In addition, legislators are sometimes annoyed by the frequency with which new initiatives are proposed and lobbied for, particularly when the proposed legislation is simply an adjustment of existing law.

In view of these difficulties, the letter suggests that appropriate internal administrative policy, regulations, or procedures be considered to meet many Federal requirements. Such alternatives may be preferable to requiring State IV-D agencies to return to the legislature to meet detailed Federal mandates.

# Vermont

William Kirby, Chairman

The Vermont Child Support Commission presented its formal recommendations to Governor Madeleine M. Kunin in September 1985. In arriving at its recommendations, the commission received expert testimony from specialists about the child's needs and problems, and conducted public hearings to solicit written and verbal testimony from custodial and noncustodial parents. Subcommittees conducted intensive research into specific topics: interstate obligations and enforcement; child support, visitation, and custody; standards for child support awards; and preventive measures related to child support. Based on these findings, the commission drafted its final recommendations, which are summarized here.

## ADMINISTRATIVE AND JUDICIAL ORGANIZATION

The commission recommends that all child support enforcement cases be funneled through one agency, preferably the IV-D agency (a division of the Department of Social Welfare). All child support payments should pass through the same agency also. An exception would be made only for problem-free cases where neither party wanted collections to go through the IV-D agency.

In accordance with the Child Support Enforcement Amendments of 1984 (Public Law 98-378), the State child support system should provide the same services, with equivalent staffing, to all clients, whether they are receiving public assistance or not.

## CHILD SUPPORT

The commission recommends that guidelines be developed to establish support obligations.

State law should require that all child support awards include a cost-of-living rider to provide for annual updates. The commission recommends that similar action be taken nationally.

The commission also recommends that the Federal Office of Child Support Enforcement (OCSE) commission a study of the problems involved in obtaining child support from absent parents who are self-employed and/or who have their assets in someone else's name.

In view of the number of innovative approaches to the child support problem now being initiated by different States, the commission recommends that Vermont's child support program be required, at least for the next 2 or 3 years, to study these new approaches, analyze their applicability to Vermont, and submit an annual report to the Governor about those that have most merit.

## CHILD CUSTODY AND VISITATION

In the interrelated areas of child support, custody, and visitation, the commission recommends that State statutes be amended to recognize that the court should determine the degree of responsibility to be allocated to each parent, including the parents of children born out of wedlock. The commission further recommends that the Governor support legislation introduced in 1985 (H-115) that incorporates some findings of a Maine commission on custody.

State law should be amended to provide that in any divorce proceeding, minor children be accorded party status and representation by a guardian ad litem.

To reduce the number of contested cases, attorney fees, and the need for court time, mediation should be mandatory in all contested cases. The mediation may be arranged publicly or privately. If public mediation is used, the parties would pay on a sliding scale.

## INTERSTATE ENFORCEMENT

Because effective interstate enforcement requires coordination between various jurisdictions, the commission recommends that the Federal Office of Child Support Enforcement set the standards for interstate cases. Among the recommended actions are:

1. OCSE should set a minimum number of contacts a State's location unit must make when locating absent parents.
2. OCSE should create a nationwide central registry for all court orders involving child support.
3. Social Security numbers and current financial affidavits of both parties should be included in all child support orders.
4. OCSE should specify the minimum basic elements to be included in the parties' financial affidavits, including real property values.
5. Interstate child support cases should be processed from one IV-D agency to another, rather than from court to court under the Uniform Reciprocal Enforcement of Support Act.
6. OCSE should work to have Federal laws and regulations amended to require the Social Security Administration to provide Social Security numbers and addresses to child support agencies upon request and without cost.
7. The Department of Labor should be required to create a wage data base that would be available to State child support agencies.

## PATERNITY

The commission recommends that OCSE be requested to fund an all-out research effort to develop a genetic test, or tests, that would constitute positive proof of paternity.

## PUBLIC AWARENESS

The commission recommends that the State IV-D agency and the Vermont Department of Education develop a standard lesson plan explaining the responsibilities of both parents for supporting their children. The lesson plan should then be incorporated into the curriculum of all secondary schools.

# Virginia

Frederick P. Aucamp, Chairman

Over an 8-month period, the Virginia Governor's Commission on Child Support met 12 times and conducted four public hearings. In addition, members of five subcommittees met at other times to focus on specific issues. The resulting final report consists primarily of recommendations and rationales for those recommendations, which are highlighted in this summary. Statements from several minority reports appended to the commission's findings are noted where appropriate.

## ADMINISTRATIVE AND JUDICIAL ORGANIZATION

Currently, juvenile and domestic relations district courts handle issues of child support enforcement. Because fragmentary judicial organization has resulted in multiple hearings and unnecessary emotional trauma to all parties, the commission recommends establishment of a family court to deal exclusively with adoptions, custody, visitation, support, divorce, and related matters.

## CHILD SUPPORT

### Amount of Support

The commission recommends adoption of child support guidelines based on the "share the benefit" principle. This tenet asserts that the child is entitled to share the benefit of either parent's higher-than-subsistence-level standard of living. The income-shares formula reflects the proportion of parental income that the child would have received had the parents continued to live together. This approach was developed for the U.S. Office of Child Support Enforcement by Robert G. Williams of the National Center for State Courts and is now, or soon will be, in effect in the States of Washington, New Jersey, and Michigan.

The formula for calculating basic child support obligations is based on combined gross income. There are also formulas for dealing with extraordinary medical and dental expenses.

### Minority Reports

In his minority report, the commissioner of the Virginia Department of Social Services questions the validity of the income-shares approach and cites the existence of discretionary factors to be decided which may force the issue into court, delaying the decision and suspending payment while the appeal is brought.

In a separate minority report, two members of the commission issued a strongly critical statement regarding the proposed child support formula, saying that it would mistreat the majority of separated noncustodial parents. Among the concerns they mention are the lack of consideration of the custodial parent's income and of the substantial costs faced by noncustodial parents. They also question the commission's wish that the Virginia Supreme Court immediately adopt the guidelines as rules of court, without review by the general assembly.

### Enforcement

The commission advocates amendments to existing State law that would:

- make multiple methods available (in addition to liens) to secure satisfaction of judgments
- require the State Division of Child Support Enforcement to report information on obligors' support payment arrears to consumer credit reporting bureaus when the amount in arrears is $500 or more and is 30 days delinquent
- view support as a civil rather than a criminal matter

For obligors convicted and sentenced for violating a support order, work release programs and a community diversion incentives program should be established as alternatives to incarceration. In addition, local work squads and workhouses could generate support payments through mandatory work.

The commission recommends that the language in court orders should indicate the court's displeasure with self-help remedies. The language should further stress the need to bring in official third parties when the child's welfare is in grave danger.

## CHILD CUSTODY

The commission emphasizes the value of joint custody and recommends that it be ordered when not contrary to the child's best interests. Further, mediation and counseling should be mandated in custody cases so that adversarial actions are undertaken only as a last resort.

A guardian ad litem (one who represents the child's or children's interests) should be appointed in custody and visitation disputes between parents.

### Minority Report

In a minority report, one commission member expresses concern that mandatory mediation may serve only to delay the process and increase the possibility of abuse within the family. Instead, he calls for discretion in treating each case according to its circumstances.

## VISITATION

The commission stresses the right of noncustodial parents to have reasonable parenting time, access to the child's school and medical records, and a voice in substantive decisionmaking regarding the child's life. The same enforcement remedies for support enforcement should be made available for visitation rights of noncustodial parents.

The commission recommends a system of visitation credits that is tied to the child support payments. Under this system, the noncustodial parent would receive a reduction in support payments for visitation days over certain limits.

### Minority Report

In a minority report, one commission member cautions against an administrative agency becoming involved in visitation issues, as it would be in the recommended visitation credit system.

Authors of another minority report propose that all custody orders involving children of fit parents provide for at least 73 days of parenting time each year for the noncustodial parent. When the parents live within a reasonable distance, the minimum should be increased to 130 days a year.

## INTERSTATE ENFORCEMENT

The commission recommends revision of the Uniform Reciprocal Enforcement of Support Act (URESA) to:

- require all incoming and outgoing cases to be IV-D, so that the State Division of Child Support Enforcement can use its full enforcement authority
- specifically bar suspension of support because of denial of visitation, to keep the issues of support and visitation separate
- include language which addresses the issue of medical coverage

Further recommendations for Federal action include establishing a "watchdog" agency to monitor URESA cases and developing policy to prohibit the deduction of fees from a family's support.

Virginia courts should have authority to punish the responsible party for contempt of an out-of-State support, custody, or visitation order. Currently, State courts are powerless to exercise contempt powers unless the out-of-State decree is properly registered.

## PATERNITY

A system should be developed to monitor births to unwed mothers, inform them of their parental rights and responsibilities, and investigate paternity to increase the chances of securing early voluntary support.

Public education should focus on the responsibilities of parenthood and the consequences of nonsupport.

The Uniform Parentage Act, as amended to conform to Virginia law, should be adopted.

# Washington

Luvern Rieke, Chair

In 1984, the Washington State Legislature passed a child support bill (SHB 1627, chapter 120, Laws of 1984) that, among other provisions, created the Joint Legislative Committee on Child Support. The committee's primary mission was to determine the State child support system's success in securing support and parental involvement both for children who are eligible for public assistance and those who are not. During its life, the committee held four hearings and considered numerous topics summarized in its final report dated October 1, 1985.

Because the joint committee had fulfilled its functions and its work could be carried on by the house and senate judiciary committees, the legislature ended the committee's existence as of July 28, 1985. In addition to continued examination by the legislature, the child support system will receive scrutiny from the Governor's executive task force on support enforcement and related issues.

## CHILD SUPPORT

### Amount of Support

Washington State's Uniform Child Support Guidelines (UCSG) were adopted by the Association of Superior Court Judges in 1982 and were revised in 1985. The standards are professional guidelines and are not imposed on local jurisdictions by State court rule. A 1984 survey showed that the UCSG are official court policy in 20 of the State's 29 superior court districts. In the remaining jurisdictions, local guidelines closely parallel the UCSG or are permitted as a reference in conjunction with the UCSG.

The guidelines recognize that both parents have an equal duty to contribute to the support of their children. The schedule establishes the total dollar amount that will meet the needs of children at varying income levels; higher support payments are given for older children. The percentage of the schedule amount that each parent contributes is based on the percentage of the total of both parents' income. The guidelines presume that as a rule the disposable income of the obligated parent will not be reduced below 50 percent, regardless of the presumptive support level derived from the schedule.

The guidelines are presumptive, and individual cases are decided on the facts of the particular case.

The joint committee also examined Wisconsin's percentage-of-income standard and California's system for determining mandatory minimum support awards on the basis of monthly payment standards for children under the Aid to Families with Dependent Children (AFDC) program. The committee made no formal recommendations on any of these methods of determining support amounts.

## Support Modification

In Washington, support obligations are generally established and modified by superior courts. The jurisdiction of the State Office of Support Enforcement (OSE) to establish or modify a support obligation administratively is dependent upon the absence of a superior court order.

The joint committee considered several alternatives to full superior court involvement in setting or modifying support obligations. Among the alternatives examined were pro se (self-representation) modification, periodic review of support orders, modification by affidavit, and modification through administrative hearings or arbitration.

Although the joint committee did not take formal action regarding any of these proposals, the 1985 State legislature did. House Bill 58 (chapter 265, Laws of 1985) extends the scope of mandatory arbitration laws to include child support issues.

## Health Insurance Coverage

In 1985, the Washington State Legislature passed legislation (SHB 746, chapter 108, Laws of 1985) that provides that in entering or modifying a child support order, the court will require either parent or both parents to maintain health insurance coverage for a child if coverage is available through an employer or other organization that will contribute all or part of the premium to cover the child. The inclusion of health insurance coverage in a support order does not limit a court's authority to enter or modify orders for other medical-related costs or expenses.

## Collection and Enforcement

The 1984 law that created the Joint Legislative Committee on Child Support also significantly changed the State's child support laws. The bill particularly emphasized the addition of new collection mechanisms. Newly created remedies for enforcing support obligations included a system for mandatory wage assignments, specific procedures for contempt of court actions against obligated parents who have failed to comply with support orders, and authorization for courts to require an obligor to post a bond or other security. Homesteads were made subject to judgments obtained on debts arising by virtue of orders establishing support obligations. In addition, the bill amended paternity statutes to reflect advances in the field of paternity blood testing that have resulted in the increased accuracy of scientific tests to determine the likelihood of paternity.

The passage of the Federal Child Support Amendments of 1984 necessitated relatively minor changes in Washington law. Draft legislation incorporating those changes was prepared by the State

Office of Support Enforcement, reviewed by the joint committee, and passed by the State legislature (HB 153, chapter 176, Laws of 1985).

Members of the committee expressed concern that the new incentive-payments structure in the Federal statute contained a bias against States like Washington that had effective support enforcement programs already in place. Responses from the State Department of Social and Health Services and Region X of the U.S. Department of Health and Human Services indicated that, assuming the numbers of AFDC and non-AFDC cases equalize over time, the State will continue to earn very similar amounts under the new law.

## INTERSTATE ENFORCEMENT

Among the provisions of the 1985 legislation discussed earlier was authorization for OSE to use the administrative process to establish and enforce support obligations against obligated parents residing in Washington, on behalf of custodial parents in other States. Previously, out-of-State requests for services could only be processed through the judicial system under the Uniform Reciprocal Enforcement of Support Act.

## RECOMMENDATIONS

The joint committee's one formal recommendation during its term was for the passage of legislation (HB 153) designed to bring the State into compliance with the Child Support Enforcement Amendments of 1984.

## West Virginia

Thais Blatnik, Chair

On May 9, 1985, West Virginia's Governor Arch A. Moore, Jr. issued an executive order in response to the Child Support Enforcement Amendments of 1984 (Public Law 98-378). This order established the Commission on Child Support Development and Enforcement, which was charged with recommending improvements to the existing State statutes on child support and with developing a fair formula for determining the amount of child support a noncustodial parent should pay.

In order to do this, the commission held a series of public meetings and also opened all of its meetings to the public. The commission's recommendations are based on the information gathered at these hearings and on the major requirements of Public Law 98-378. These recommendations have been incorporated into the draft legislation that is summarized here.

### ADMINISTRATIVE AND JUDICIAL ORGANIZATION

In the proposed legislation, two procedures would be available for establishing and enforcing child support. The first procedure is judicial and is already in place. The second is an administrative procedure and would be run by the Office of Child Support Enforcement of the West Virginia Department of Human Services.

The legislation also requires that the chief judge of each circuit court designate at least one magistrate to hear support action cases. This is a change from current statutes, which permit but do not require the appointment of a magistrate to hear child support issues. Consequently, some circuit courts have appointed such magistrates and others have not.

### CHILD SUPPORT

#### Amount of Support

In the proposed legislation, the amount of child support to be paid is determined by considering the assets, income, earning ability, and other obligations of the noncustodial parent and the needs, other income, and any other circumstances relevant to the needs of the custodial parent.

The commission devised a formula to determine the amount of support on the basis of the adjusted monthly gross income of the noncustodial parent and the number of children needing support.

#### Collection

The State OCSE is entitled to collect support payments due to custodial parents who are receiving public assistance. The State

Department of Human Services is entitled to retain only the amount of support necessary to reimburse the State for public assistance actually paid out.

The State OCSE is also empowered to collect support money for those persons who do not receive public assistance but request that the OCSE collect their support payments for them. The OCSE may charge a reasonable fee for this service.

**Enforcement**

The draft legislation provides for the following procedures when a parent is 30 days behind in support payments:

1. OCSE has the power to require that the employer withhold the amount of support owed from the noncustodial parent's earnings.
2. If the noncustodial parent is self-employed or if for any other reason support payments cannot be withheld from earnings, the parent must provide some security or bond to ensure that future payments are made.

If the parent has the ability to pay support but refuses to do so, the court has the authority to impose a jail sentence of up to 6 months, or until such time as the parent pays the arrearage.

If the parent is unable to pay support because he has quit his job without good cause or because he refuses to seek employment, the court has the authority to confine him in the county jail for not less than 48 hours nor more than 30 days.

## CHILD CUSTODY

The court has the power to decide which parent receives custody of minor children. It also has the authority to prevent either parent from interfering with the custodial or visitation rights of the other parent.

## VISITATION

The court has the authority to decide the visitation rights of the noncustodial parent. It may also decide the visitation rights of grandparents in certain circumstances.

## INTERSTATE ENFORCEMENT

The State of West Virginia honors support-withholding orders from other States, the District of Columbia, Puerto Rico, and all U.S. territories and possessions.

## ESTABLISHING PATERNITY

The legislation proposes that paternity may be established by civil action anytime before a child reaches 18 years of age. To establish paternity, the court may order the mother, her child, and the reputed father to submit to blood tests.

The county prosecutor has the duty to represent the mother in paternity cases.

## RECOMMENDATIONS

In general, the commission endorses the Federal mandates in Public Law 98-378 and recommends that West Virginia State law be changed to incorporate those mandates. Some of the more pertinent commission recommendations are presented here.

### Administrative and Judicial Organization

In order to expedite the child support decisionmaking process and to increase the State's ability to enforce these decisions, the commission recommends that the Office of Child Support Enforcement of the Department of Human Services be given broad administrative and enforcement powers. This office would be empowered to serve not only those who receive public assistance because the supporting parent is absent, but also those who do not receive public assistance but who request the services of OCSE.

The commission also recommends that the current court system for child support cases remain in place.

### Child Support

The commission modified a formula now in use in the State to determine the amount of support payments and recommends that this modified formula be established administratively, rather than through law.

The commission recommends the following procedures to ensure collection of overdue child support payments:

- withholding the payment from the delinquent parent's earnings
- forwarding the delinquent parent's State income-tax refund from the tax commissioner directly to the State OCSE
- notifying credit bureaus and lending institutions of arrearages
- requiring the delinquent parent to post a bond or other form of security to ensure that future payments are made

### Visitation

The commission suggests that rights of grandparents be addressed in future legislation.

### Establishing Paternity

Present State law allows a child's paternity to be established up until the child is 10 years old. The commission recommends that this age be extended to 18, to comply with Federal mandates.

## Continued Life of the Commission

The commission concluded its report with a recommendation that a Commission on Child Support Development and Enforcement be established permanently.

## Wyoming

Eric Distad, Chairperson

Wyoming's eight-member Commission on Child Support was appointed in December 1984 by Governor Ed Herschler. The group solicited testimony from the public and heard presentations by district court judges, clerks of court, and legislators. Five subcommittees were formed to examine areas of most pressing need within the State: visitation and custody, income withholding and paternity, interjurisdictional enforcement, support guidelines, and the State child support system. The final report was submitted October 1, 1985.

### ADMINISTRATIVE AND JUDICIAL ORGANIZATION

The Child Support Enforcement Section of the Wyoming Division of Public Assistance and Social Services, Wyoming Department of Health and Social Services, deals with securing support for children who are and are not receiving aid from the State. Custodial parents apply for child support through the local division of public assistance and social services.

#### Problems

A staff of 14 in the State office is responsible for establishing and enforcing child support obligations statewide. The office operates largely without computerization and with a lack of training in specific procedures for many personnel.

### CHILD SUPPORT

#### Amount of Support

Because there is no single standard of adequate child support, variations abound. In addition, the commission found that child support awards in the State are frequently below that necessary to provide even minimal life requirements.

#### Collection

Collection of child support is performed on a county-by-county basis. Twelve of 23 counties have agreed to cooperate with the Child Support Enforcement Office, but the remainder use a variety of collection points, including clerks of court and the obligors themselves.

## Enforcement

Wyoming statutes are not in compliance with Public Law 98-378, which mandates guidelines and requirements for income withholding. Presently, statutes provide for three types of enforcement remedies for support: income withholding, including unemployment compensation; liens on property; and security deposits to assure payments.

## CHILD CUSTODY

Wyoming statutes provide only for sole custody, limiting the legal influence of the noncustodial parent in raising the child. No provisions are made within State law for shared custody or shared decisionmaking. In some cases, however, courts have granted joint custody on the grounds that legislation does not expressly deny it.

## VISITATION

Noncustodial parents are not able to obtain medical care for their children during visitation, nor do they have access to medical and school records.

Difficulties exist in locating children whose whereabouts are unknown to noncustodial parents.

Testimony suggested that a lack of clarity in orders creates problems for the noncustodial parent in enforcing visitation, and that lack of funds prevents some noncustodial parents from bringing visitation orders before the courts.

## INTERSTATE ENFORCEMENT

Estimates suggest that a minimum of 30 percent of all support actions are interjurisdictional. Currently, under the Uniform Reciprocal Enforcement of Support Act (URESA), the petition for support is filed in the county in which the child's custodian resides and is then forwarded to the county or State in which the absent or noncustodial parent lives or has assets. The majority of petitions are prepared by the State child support program, although they may be initiated by the local prosecutor's office.

Wyoming has not yet complied with the Child Support Enforcement Act Amendments of 1984, which require States to develop an interstate withholding program.

## Problems

There is a lack of uniformity in URESA practices, including forms and procedures applicable to cases involving public assistance. Enforcement agencies within States also vary. Regardless of where the case is deliberated, there is a lack of follow-up on court orders. Further, in judicial deliberation, issues such as paternity, visitation rights, enforcement remedies, and support guidelines are not dealt with in a uniform fashion.

## RECOMMENDATIONS

### Administrative and Judicial Organization

Despite an internal audit report recommending placement of the State Child Support Enforcement Section staff in field offices, the commission recommends that the office not be decentralized. One person from the Department of Public Assistance and Social Services field offices should be designated for taking applications, and that person should be trained in the laws and remedies.

Increased computerization would help to monitor all aspects of the section's functioning.

### Child Support

A schedule for payment should be devised based largely on the ability of the absent parent to pay child support and the needs of the children. Such a schedule, formulated on the USDA's data on the cost of raising a child, was developed for further study. The proposed schedule is based on net monthly income and is accompanied by guidelines for its use. The guidelines suggest a moderate level of support to meet average needs rather than a minimum level, with the intent of maintaining the child's standard of living as much as possible at the level of the intact family. The guidelines should be distributed to the Wyoming Bar Association, Wyoming Judicial Conference and other interested organizations.

Collection should be accomplished through the clerk of the district court in which the order was entered. No collection from the obligor should be made by the Department of Health and Social Services.

Each county and prosecuting attorney should try to ensure that child support is paid as owed and should take steps to remedy an amount in arrears. Attorneys should be trained regarding effective remedies for collecting support.

Wyoming should pass legislation to develop a system of income withholding in which permanent wage assignments/garnishments for child support obligations will be carried out semi-automatically whenever a default or arrearage occurs without good cause. A draft bill is appended to the report, and its adoption in the 1986 budget session is advocated. (A minority report cites ambiguities in the language of the bill.)

### Paternity

Language of the Wyoming Uniform Parentage Act must be clarified by eliminating the statute of limitations in determining paternity of children born out of wedlock.

### Interstate Enforcement

A task force should establish an information clearinghouse on practices in other States as well as in the 23 Wyoming counties. The task force should seek consensus with other States on matters such as child support guidelines and enforcement remedies.

All URESA orders should require that payments be made to the local clerk of court, who should then provide periodic recordkeeping.

Each Judicial District should designate specific times each month to review support cases for compliance.

The State child support agency should be funded to serve as a central registry for incoming and outgoing URESA cases, and county offices should be granted increased staffing and funding to handle URESA cases. Personnel should participate in periodic training in effective procedures for URESA cases.

**Child Custody**

Alternatives to sole custody should be examined and used when appropriate. Sole custody should be awarded only in extreme circumstances, such as child abuse or neglect. A minority report suggests that joint custody be considered in all cases.

**Visitation**

Visitation should be treated as an obligation. The Federal Parental Locator Service should be used to help find children whose whereabouts are unknown to noncustodial parents.

Grandparents and stepparents should be able to establish their visitation rights and secure the same enforcement remedies available to noncustodial parents.

# APPENDICES

# The Nation's Governors

The Honorable George C. Wallace
Governor of Alabama
Montgomery, Alabama 36130

The Honorable Bill Sheffield
Governor of Alaska
Pouch A
Juneau, Alaska 99811

The Honorable A. P. Lutali
Governor of American Samoa
Government House
Pago Pago, American Samoa 96799

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Governor of Arizona
State House
Phoenix, Arizona 85007

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Governor of Arkansas
State Capitol
Little Rock, Arkansas 72201

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Governor of California
State Capitol
Sacramento, California 95814

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Governor of Colorado
State Capitol
Denver, Colorado 80203

The Honorable William A. O'Neill
Governor of Connecticut
State Capitol
Hartford, Connecticut 06115

The Honorable Michael N. Castle
Governor of Delaware
Legislative Hall
Dover, Delaware 19901

The Honorable Marion S. Barry, Jr.
Mayor of the District of Columbia
District Building, 520
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

The Honorable Bob Graham
Governor of Florida
State Capitol
Tallahassee, Florida 32301

The Honorable Joe Frank Harris
Governor of Georgia
State Capitol
Atlanta, Georgia 30334

The Honorable Ricardo J. Bordallo
Governor of Guam
Executive Chambers
Agana, Guam 96910

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Governor of Hawaii
State Capitol
Honolulu, Hawaii 96813

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Governor of Idaho
State Capitol
Boise, Idaho 83720

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Governor of Illinois
State Capitol
Springfield, Illinois 62706

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Governor of Indiana
State Capitol
Indianapolis, Indiana 46204

The Honorable Terry Branstad
Governor of Iowa
State Capitol
Des Moines, Iowa 50319

The Honorable John Carlin
Governor of Kansas
State Capitol
Topeka, Kansas 66612

The Honorable Martha Layne Collins
Governor of Kentucky
State Capitol
Frankfort, Kentucky 40601

The Honorable Edwin W. Edwards
Governor of Louisiana
State Capitol
Baton Rouge, Louisiana 70804

The Honorable Joseph E. Brennan
Governor of Maine
State House
Augusta, Maine 04330

The Honorable Harry Hughes
Governor of Maryland
State House
Annapolis, Maryland 21404

The Honorable Michael S. Dukakis
Governor of Massachusetts
State House
Boston, Massachusetts 02133

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Governor of Michigan
State Capitol
Lansing, Michigan 48909

The Honorable Rudy Perpich
Governor of Minnesota
State Capitol
St. Paul, Minnesota 55155

The Honorable William A. Allain
Governor of Mississippi
State Capitol
Jackson, Mississippi 39205

The Honorable John Ashcroft
Governor of Missouri
State Capitol
Jefferson City, Missouri 65101

The Honorable Ted Schwinden
Governor of Montana
State Capitol
Helena, Montana 59620

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State Capitol
Lincoln, Nebraska 68509

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Governor of Nevada
State Capitol
Carson City, Nevada 89710

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Governor of New Hampshire
State House
Concord, New Hampshire 03301

The Honorable Thomas H. Kean
Governor of New Jersey
State House
Trenton, New Jersey 08625

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Governor of New Mexico
State Capitol
Santa Fe, New Mexico 87503

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Governor of New York
State Capitol
Albany, New York 12224

The Honorable James G. Martin
Governor of North Carolina
State Capitol
Raleigh, North Carolina 27611

The Honorable George Sinner
Governor of North Dakota
State Capitol
Bismarck, North Dakota 58505

The Honorable Richard F. Celeste
Governor of Ohio
State House
Columbus, Ohio 43215

The Honorable George Nigh
Governor of Oklahoma
State Capitol
Oklahoma City, Oklahoma 73105

The Honorable Victor G. Atiyeh
Governor of Oregon
State Capitol
Salem, Oregon 97310

The Honorable Dick Thornburgh
Governor of Pennsylvania
State Capitol
Harrisburg, Pennsylvania 17120

The Honorable Rafael Hernandez-Colon
Governor of Puerto Rico
La Fortaleza
San Juan, Puerto Rico 00901

The Honorable Edward DiPrete
Governor of Rhode Island
State House
Providence, Rhode Island 02903

The Honorable Richard W. Riley
Governor of South Carolina
State House
Columbia, South Carolina 29211

The Honorable William J. Janklow
Governor of South Dakota
State Capitol
Pierre, South Dakota 57501

The Honorable Lamar Alexander
Governor of Tennessee
State Capitol
Nashville, Tennessee 37219

The Honorable Mark White
Governor of Texas
State Capitol
Austin, Texas 78711

The Honorable Norman H. Bangerter
Governor of Utah
State Capitol
Salt Lake City, Utah 84114

The Honorable Madeleine M. Kunin
Governor of Vermont
State House
Montpelier, Vermont 05602

The Honorable Gerald L. Baliles
Governor of Virginia
State Capitol
Richmond, Virginia 23219

The Honorable Juan F. Luis
Governor of the Virgin Islands
Government House
Charlotte Amalie, St. Thomas
Virgin Islands 00801

The Honorable W. Booth Gardner
Governor of Washington
Legislative Building
Olympia, Washington 98504

The Honorable Arch A. Moore, Jr.
Governor of West Virginia
State Capitol
Charleston, West Virginia 25305

The Honorable Anthony S. Earl
Governor of Wisconsin
State Capitol
Madison, Wisconsin 53702

The Honorable Ed Herschler
Governor of Wyoming
State Capitol
Cheyenne, Wyoming 82002

## Chairpersons
## Child Support Commissions

The Honorable Leon Frazier
Commissioner
Alabama Department of Pensions
and Security
64 North Union Street
Montgomery, Alabama 36130-1801

The Honorable Mary A. Nordale
Department of Revenue
Pouch S
Juneau, Alaska 99811

The Honorable Lee A. Munson
Chancery Judge of the Sixth
Judicial District
Pulaski County Courthouse, Room 301
Markham and Springs Streets
Little Rock, Arkansas 72201

Ms. Fay Fleming
12424 North Ash
Thorton, Colorado 80241

Mr. Samuel V. Schoonmaker III, Esq.
10 Stanford Forum
P.O. Box 120
Stanford, Connecticut 06904

The Honorable Herman Holloway, Sr.
Co-Chairperson
Delaware Child Support Commission
Delaware Senate
2008 Washington Street
Wilmington, Delaware 19801

The Honorable Jane Maroney
Co-Chairperson
Delaware Child Support Commission
Delaware House of Representatives
4605 Concord Pike
Wilmington, Delaware 19801

Ms. Mary Ann Stein
Foundation for Women Judges
1225 15th Street, N.W.
Washington, D.C. 20005

William J. "Pete" Page, Jr., Professor
Department of Public Administration
614 Bellamy Building
Florida State University
Tallahassee, Florida 32306

Representative Mary Jane Galer
7236 Lullwater Road
Columbus, Georgia 31904

Ms. Marilou J. Taijeron
Social Services Supervisor
Child Welfare Program
Department of Public Health
and Social Services
P.O. Box 2816
Agana, Guam 96910

The Honorable Evelyn B. Lance
Judge of the First Circuit
Family Court
465 S. King Street
Honolulu, Hawaii 96813

Mr. Shawn Anderson, Prosecutor
Bannock County
Bannock County Courthouse
Pocatello, Idaho 83202

Mr. Stephen Goldsmith
Marion County Prosecutor
City-County Building
Indianapolis, Indiana 46204

Mr. Douglas Smalley
Attorney at Law
1603 48th Street
Des Moines, Iowa 50310

The Honorable Herbert Walton
Judge of the 10th Judicial District
Johnson County Courthouse
Olathe, Kansas 66061

The Honorable William L. Graham
Judge of the Franklin County
Circuit Court
Franklin County Courthouse
Frankfort, Kentucky 40601

The Honorable C. Allen Bradley, Jr.
House of Representatives
107 North Pine
DeRidder, Louisiana 70634

Ms. Catherine M. Dunham
Governor's Office of Human Resources
Room 109, State House
Boston, Massachusetts 02133

Ms. Mary Klas, Esq.
1800 American National Bank Building
St. Paul, Minnesota 55101

Ms. Beverly Hogan, Director
Federal/State Programs
2002 Walter Sillers Building
Jackson, Mississippi 39205

Mr. Ray Simonton
Child Support Enforcement Unit
350 Henly Industrial Court
St. Louis, Missouri 63149

The Honorable Robert M. Holter
Judge of the District Court
19th Judicial District
P.O. Box 974
Libby, Montana 59923

Ms. Elizabeth A. Peterson
3817 Dudley
Lincoln, Nebraska 68503

The Honorable Courtenay Swain
State Assembly Legislative Building
Carson City, Nevada 89710

Mr. David Engle
Engle and Morse P.A.
Attorney at Law
Post Office Box 278
Exeter, New Hampshire 03833

Mr. Thomas P. Zampino, Esq.
653 Franklin Avenue
Nutley, New Jersey 07110

The Honorable Benny E. Flores
District Judge
San Miguel County Court House
Las Vegas, New Mexico 97701

Ms. Judith Avner
Director, New York State Division
for Women
Two World Trade Center, 57th Floor
New York, New York 10047

The Honorable Ruth Meier
Lieutenant Governor of North Dakota
State Capitol
Bismarck, North Dakota 58505

Dr. Andrew I. Schwebel
Professor of Psychology
Ohio State University
1885 Neil Avenue Mall
Columbus, Ohio 43210

The Honorable Jon D. Douthitt
Associate Judge
Ottowa County District
Box 1203
Miami, Oklahoma 74355

Mr. Leonard T. Sytsma
Recovery Services Section
Department of Human Resources
P.O. Box 14506
Salem, Oregon 97309

The Honorable Walter W. Cohen
Secretary
Department of Public Welfare
333 Health and Welfare Building
Harrisburg, Pennsylvania 17120

Ms. Carmen Sonia Zayas
Secretary
Department of Social Services
Box 11398
Fernandez Juncos Station
San Turce, Puerto Rico 00910

The Honorable James L. Solomon, Jr.
Commissioner
Department of Social Services
P.O. Box 1520
Columbia, South Carolina 29202

Ms. Linda Lee Viken
P.O. Box 2934
Rapid City, South Dakota 57709

The Honorable Kenneth Turner
Judge of the Juvenile Court of Memphis
P.O. Box 310
Memphis, Tennessee 38101

The Honorable Enrique H. Pena
Judge of the 327th Judicial District Court
City-County Building
El Paso, Texas 79901

Mr. William Kirby
Department of Social Welfare
103 S. Main Street
Waterbury, Vermont 05676

The Honorable Fred P. Aucamp
Judge of the Virginia Beach Juvenile and Domestic Relations District Court
Municipal Center, Room 211
Virginia Beach, Virginia 23456

Mr. Norman Johansen
Commissioner of Social Welfare
P.O. Box 550
St. Thomas, Virgin Islands 00801

The Honorable Thais Blotnik
Legislature of West Virginia
51 Forest Hills
Wheeling, West Virginia 26003

Mr. Martell Hilderbrand
Attorney at Law
500 Gillette, Wyoming 82716

## States with Waivers that Volunteered to Participate in these Summaries

California

Mr. DeWayne Holmdahl
County Supervisor
County of Santa Barbara
401-E Cypress
Lompoc, California 93436

Illinois

Mr. James I. Gottreich, Chief
Bureau of Child Support Enforcement
Illinois Department of Public Aid
Jesse B. Harris Building
100 South Grand Avenue East
P.O. Box 2127
Springfield, Illinois 62705

Maryland

Mr. Charles H. Dorsey, Esq.
Executive Director
Legal Aid Bureau
Baltimore, Maryland 21202

Michigan

Mr. Jerrold Brockmyre, Director
Office of Child Support
Department of Social Services
300 South Capitol Avenue-Suite 621
Lansing, Michigan 48909

Rhode Island

Mr. George Moriarty, Agency Head
Bureau of Family Support
Department of Human Services
77 Dorrance Street
Providence, Rhode Island 02903

Utah

Mr. John P. Abbott, Director
Office of Recovery Services
Department of Social Services
150 West National Temple St., 4th Floor
Salt Lake City, Utah 84103

Washington

Mr. Luvern Rieke
Professor of Law
University of Washington
Seattle, Washington 98195

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